

FINAL CONTRACT Dated Wednesday, December 15, 2010
PROJECT NUMBER 37577
PROFESSIONAL SERVICES AGREEMENT
BETWEEN
MISSISSIPPI INTERACTIVE, LLC
AND
MISSISSIPPI DEPARTMENT OF INFORMATION TECHNOLOGY SERVICES
AND
MISSISSIPPI DEPARTMENT OF FINANCE AND ADMINISTRATION

This Professional Services Agreement (hereinafter referred to as "Agreement") is entered into by and between Mississippi Interactive, LLC, a Mississippi limited liability company having its principal place of business at 120 North Congress Street, Suite 650, Jackson, Mississippi 39201 (hereinafter referred to as "Contractor"), and Mississippi Department of Information Technology Services having its principal place of business at 301 North Lamar Street, Suite 508, Jackson, Mississippi 39201 (hereinafter referred to as "ITS"), and the Mississippi Department of Finance and Administration located at 501 North West Street, Suite 1201A, Jackson, Mississippi 39201 (hereinafter referred to as "DFA"). ITS and DFA are sometimes collectively referred to herein as "State" or "Customer."

WHEREAS, Customer, pursuant to Request for Proposals ("RFP") No. 3564 requested proposals for the acquisition of E-Government applications and services in support of state government in Mississippi, and

WHEREAS, Contractor was the successful proposer in an open, fair and competitive procurement process to provide the services described herein;

NOW THEREFORE, in consideration of the mutual understandings, promises and agreements set forth, the parties hereto agree as follows:

ARTICLE 1 DEFINITIONS

The following terms as used herein shall have the following meanings:

1.1 "Affiliates" mean any corporation or other entity controlled by, controlling, or under common control with Contractor.

1.2 "Agency Direct Fees" means fees paid by state agencies per the terms and conditions of a specific SOW to cover all or part of the Cost of Sales, E-Government Transaction Fees above the Cost of Sales, portal application hosting fees, or other fees as may be described in the SOW. Agency Direct Fees come into play when a state agency in accordance with Section 27-104-33, et seq., of the 1972 Mississippi Code Annotated, as amended, is approved by DFA to assume the costs of electronic payments.

1.3 “Authorized Portal Contractors” means contractors engaged by or on behalf of the State to assist the State in the Permitted Use of the Source Code and Portal Software, who have executed a written confidentiality agreement agreeable to Contractor, that protects the Source and object code from unauthorized use or disclosure.

1.4 “Contractor Portal Bank Account” means one or more Contractor owned accounts as approved by the State Treasurer for deposit of all fees collected by the Contractor for Subscription Services, Agency Direct Fees, and Digital Consulting Fees from Portal Operations and for E-Government Transaction Fees and Cost of Sales fees wired each business day by the State from the State Portal Revenue Account. Monthly transfers of the Regulatory Fees for Subscription Services for Monthly Account Holders and the State’s net revenue share for contract administration will be transferred from the Contractor Portal Bank Account to the State Portal Revenue Account. The Contractor Portal Bank Account shall be a non interest bearing account.

1.5 “Cost of Sales” means ACH and credit/debit card processing fees. Cost of Sales associated with Instant Access Transactions shall be wired daily by the State from the State Portal Revenue Account to Contractor’s Portal Bank Account.

1.6 “Digital Government Consulting Fees” means any fees for digital government consulting services invoiced to and paid by state agencies to Contractor, following processes prescribed by DFA, according to a state agency specific SOW. Digital Government Consulting Fees include, without limitation, fees paid to the Contractor under a Fee For Service Project. Digital Government Consulting Fees shall be deposited into Contractor’s Portal Bank Account.

1.7 “E-Government Transaction Fee” means the mark-up above the Regulatory Fee plus the Cost of Sales as agreed to in an agency specific SOW. A description of how the E-Government Transaction Fee is to be distributed shall be included in the SOW. E-Government Transaction Fees shall be associated with Instant Access Transactions and with Subscription Services. All E-Government Transaction Fees for Instant Access Transactions other than those associated with Existing Applications will be wired daily by the State from the State Portal Revenue Account to Contractor’s Portal Bank Account.

1.8 “Electronic Services” means commercial, readily available services provided through hardware, software and network infrastructure hosted by NIC, Inc. (“NIC”), the parent company of NICUSA, Inc. (“NICUSA”), the entity that originally submitted the proposal in response to RFP No. 3564, or another of NIC’s subsidiaries, that enable applications developed by Contractor or any of its Affiliates, to authorize and capture credit and debit cards for payments; to process all other forms of electronic funds transfer, process billing and collection of funds, to manage the registration of Users of fee services, and to manage the online transaction logging data. It includes such other online services as may from time to time be developed by NIC, or

another of its subsidiaries, outside of this Agreement, and made available to the State through Contractor. Electronic Services includes Contractor's Payment Processing Services as described in SOW 001, defined herein.

1.9 “Existing Applications” means solely those applications listed in Exhibit C attached to this Agreement and do not constitute Portal Software.

1.10 “Fee For Service Project” means a time and materials engagement under this Agreement where state governmental entities choose to use state funds to enable work to be done by Contractor for Portal purposes sooner than would be the case if only Portal resources were used.

1.11 “For Use Only” means the right to use application software modules for the Permitted Uses on the Portal without the right to sell, distribute, transfer or sublicense such rights.

1.12 “Gross Revenue” means any income deposited to the Contractor Portal Bank Account, which shall consist of fees collected via Instant Access Transactions, Subscription Services, Agency Direct Fees and Digital Government Consulting Fees. It is agreed that no portion of the E-Government Transaction Fees for Existing Applications shall be included in Gross Revenue, and that the same are not included in the calculation of the State's contract administration fee and net revenue share.

1.13 “Instant Access Transactions” means those transactions initiated on a transaction by transaction basis directly by a User, where payment is made at the time of the transaction, rather than transactions initiated under Subscription Services and billed monthly to the Monthly Account Holder.

1.14 “Modified Fee For Service Project Software” means the application software modules created by Contractor during the term of this Agreement that (i) are paid for by the State solely through a Fee for Service Project arrangement; and (ii) are not developed by Contractor from scratch, i.e., were developed using Contractor's source code, object code, software documentation, design documentation or resource predating the specific Fee For Service Project engagement. Modified Fee For Service Project Software shall be expressly identified by the applicable SOW. Modified Fee For Service Project Software does constitute Portal Software.

1.15 “Monthly Account Holder” means a User that receives Subscription Services as defined below.

1.16 “Net Revenue” means Gross Revenue less Regulatory Fees less Cost of Sales, and less any applicable transaction taxes.

1.17 “Original Fee for Service Project Software” means the application software modules

created by Contractor during the term of this Agreement that (i) are paid for by the State solely through a Fee for Service Project arrangement; and (ii) are developed by Contractor from scratch, and without use of any Contractor source code, object code, software documentation, design documentation or resources predating the specific Fee for Service Project engagement. Original Fee for Service Project Software shall be expressly identified by the applicable SOW. Original Fee for Service Project Software does not constitute Portal Software.

1.18 “Permitted Uses” or “Permitted Purposes” means use of the functionality of the software hosted on the Portal to permit Users to access Mississippi government information, governmental and other sites, and to perform certain Mississippi governmental licensing, registration and similar transactions at the State level and any lower governmental level. The term “Permitted Uses” excludes, among other things, any commercial sale, licensing or other transfer or use for commercial purposes or use for governmental transactions other than for the State of Mississippi.

1.19 “Portal” means the Mississippi enterprise-wide state portal, as described in RFP No. 3564 and this Agreement, for increased electronic access to public and other useful and relevant information as contemplated by the grant of authority by ITS to Contractor.

1.20 “Portal Operations” means all services provided by Contractor in support of Mississippi.Gov per this Agreement and all SOWs.

1.21 “Portal Software” means the application software modules created by Contractor during the term of this Agreement and used/deployed in the Portal, plus related user documentation, and includes any modifications or improvements to the Portal Software provided by Contractor for use of the Portal under this Agreement. It is understood by the parties that the Portal Software is created by Contractor at no cost to the State, except with respect to Fee For Service Projects. Portal Software does not include software programs and related documentation licensed by Contractor from third parties who are not Affiliates of Contractor. For the avoidance of doubt, the term “Portal Software” does not include any of the software, data or information hosted by NIC or its affiliated entities that is used in Electronic Services. Further, the term “Portal Software” also does not include State Software, Original Fee For Service Project Software, and Existing Applications.

1.22 “Regulatory Fees” means fees as defined in the specific state agency SOW that include but are not limited to fees, taxes, and other assessments established by statute, ordinance, policy, resolution, or other regulation and charged by the specific agency to obtain a copy of a record, obtain a license or permit, pay a tax, pay fees for registration, pay for fulfillment of the purchase or otherwise to engage in a transaction with an agency.

1.23 “Source Code” means the source code listings for a computer software program, and required compile instructions. Where the term “software” or “Portal Software” is used, such term

means software in object code only, unless Source Code is specifically mentioned.

1.24 “Statement of Work (“SOW”)” means a sub-agreement under this Agreement that defines specific additional terms and conditions regarding services for Mississippi.gov specific to that state agency. SOWs shall be multi-party agreements between ITS, the Contractor, the state agency, and DFA (if fees are to be collected and/or disbursed).

1.25 “State Portal Revenue Accounts” means one or more State of Mississippi owned accounts collateralized and opened in a qualified public funds depository as defined by Section 27-105-5, et seq of the 1972 Mississippi Code Annotated, as amended, and approved by the State Treasurer for deposit of all revenue from Instant Access Transactions from Portal Operations. Funds in the State Portal Revenue Accounts are considered to be public funds per Section 27-105-5(9)(i) of the 1972 Mississippi Code Annotated, as amended. E-Government Transaction Fees for Existing Applications and Regulatory Fees associated with Instant Access Transactions shall remain in this account for distribution and use by the State. The State Portal Revenue Account shall be a non interest bearing account.

1.26 “State Software” means the application software modules created by the State, or a third party other than Contractor or through Contractor, engaged by the State for a fee, prior to or during the term of this Agreement.

1.27 “Subscription Services” means services available to Monthly Account Holders who pay a flat annual subscription fee and a variable monthly fee for a defined period of time for unlimited access to certain premium services. These fees, when collected by the Contractor shall be deposited into the Contractor Portal Bank Account.

1.28 “Total Fees” means, for any particular electronic record delivery or electronic transaction filing, any applicable “Regulatory Fees” plus any applicable E-Government Transaction Fees, plus any applicable transaction taxes.

1.29 “User” means any person or entity that is authorized or permitted by the State to use or access the Portal for Permitted Uses.

ARTICLE 2 PERIOD OF PERFORMANCE

Unless this Agreement is extended by mutual agreement or terminated as prescribed elsewhere herein, this Agreement shall begin on the date it is signed by all parties and shall continue until the close of business on December 31, 2015 (“Initial Term”). At the end of the Initial Term, this Agreement may, upon the written agreement of the parties, be renewed for three (3) additional two (2) year terms (each a “Renewal Term”). Under no circumstances, however, shall this Agreement be renewed beyond December 31, 2021. Sixty (60) days prior to the expiration of the Initial Term or any Renewal Term of this Agreement, Contractor shall notify Customer and ITS of the impending expiration and Customer shall have thirty (30) days in which to notify

Contractor of its intention to either renew or cancel the Agreement.

ARTICLE 3 SCOPE OF SERVICES

Contractor shall perform all work specified in the RFP and Contractor's Proposal, as accepted by Customer, in response thereto. The parties understand and agree that this engagement will consist of multiple projects and project phases. Each project or project phase will be further detailed in a Statement of Work ("SOW") to be signed by all parties. Each executed SOW will be subject to all of the terms and conditions of this Agreement. As used herein, the term "Agreement" also encompasses the SOWs entered into by the parties.

ARTICLE 4 CONSIDERATION AND METHOD OF PAYMENT

The parties understand and agree that the Contractor has proposed a self-funded model for its services. All costs associated with the fulfillment of this Agreement, unless otherwise detailed in a specific Statement of Work, are included in the Contractor's self-funded business model as described in Article 39 herein.

4.1 Deliverables-based SOWs:

4.1.1 For any deliverables-based Statement of Work executed hereunder, the total compensation to be paid to the Contractor by Customer for all products, services, travel, performances and expenses under that Statement of Work shall not exceed the sum specified in the individual Statement of Work and shall be payable as set forth in the Payment Schedule and Deliverables List attached to that Statement of Work.

4.1.2 Unless another timeframe is specified in the underlying SOW or project workplan, Customer shall have fifteen (15) working days to review each deliverable and to either notify Contractor of acceptance or to provide Contractor a detailed list of deficiencies that must be remedied prior to payment being made. In the event the Customer notifies the Contractor of material, non-compliance with applicable functional specifications, the Contractor shall correct the same within ten (10) working days unless the Customer consents in writing to a longer period of time.

4.1.3 Contractor shall submit an invoice with the appropriate documentation to Customer upon Customer's acceptance of the deliverables.

4.2 Hourly-Rate SOWs:

4.2.1 As consideration for the performance of any hourly-rate Statement of Work executed hereunder, Customer shall pay Contractor at the hourly rate(s) specified in the individual Statement of Work for the actual number of hours worked, not to exceed the number of hours specified in the SOW. It is understood by the parties that travel, subsistence and any related project expenses are included in this hourly rate. No additional costs will be added to the monthly invoices for such

expenses. It is expressly understood and agreed that in no event will the total compensation to be paid hereunder exceed the sum specified in the individual Statement of Work. Contractor shall keep daily records of the actual number of hours worked and of the tasks performed and shall immediately supply such records to Customer upon request.

4.2.2 Contractor shall submit an invoice monthly with the appropriate documentation to Customer for any month in which services are rendered. Upon the expiration of this Agreement, Contractor shall submit the final invoice with appropriate documentation to Customer for payment for the services performed during the final month of this Agreement.

4.3 Contractor shall submit invoices and supporting documentation to Customer electronically during the term of this Agreement using the processes and procedures identified by the State. Customer agrees to make payment in accordance with Mississippi law on “Timely Payments for Purchases by Public Bodies”, Section 31-7-301, et seq. of the 1972 Mississippi Code Annotated, as amended, which generally provides for payment of undisputed amounts by Customer within forty-five (45) days of receipt of the invoice. Contractor understands and agrees that Customer is exempt from the payment of taxes. All payments shall be in United States currency. Payments by state agencies using the Statewide Automated Accounting System (“SAAS”), or its successor system, shall be made and remittance information provided electronically as directed by the State. These payments by SAAS agencies shall be deposited into the bank account of the Contractor’s choice. No payment, including final payment, shall be construed as acceptance of defective or incomplete work, and the Contractor shall remain responsible and liable for full performance.

4.4 Acceptance by the Contractor of the last payment from the Customer for a Fee For Service Project shall operate as a release of all claims against the State by the Contractor and any subcontractors or other persons supplying labor or materials used in the performance of the work under this Agreement.

ARTICLE 5 WARRANTIES

5.1 The Contractor represents and warrants that its services hereunder shall be performed by competent personnel and shall be of professional quality consistent with generally accepted industry standards for the performance of such services and shall comply in all material respects with the requirements of this Agreement. For any breach of this warranty, the Contractor shall perform the services again, at no cost to Customer, or if Contractor is unable to perform the services as warranted, Contractor shall reimburse Customer the fees paid by the applicable state agency to Contractor for the unsatisfactory services.

5.2 With respect to the Portal Software that may be licensed to ITS pursuant to the terms of this Agreement, Contractor represents and warrants that it has the right to license any and all

such products provided under this Agreement.

5.3 Contractor represents and warrants that the products provided by Contractor shall materially meet or exceed the minimum functional specifications set forth in RFP No. 3564 and Contractor's Proposal, as accepted by the State, in response thereto.

5.4 During the term of this Agreement, the Contractor represents and warrants that all deliverables shall be free from any material non-compliance with the applicable SOW's functional specifications (referred to herein as a "Defect"). The Contractor shall repair any Defect at no cost to the State within ten (10) business days of receiving notice of the Defect from the State, unless the Customer consents in writing to a longer period of repair time. In the event Contractor is unable to repair or replace the software within the mutually agreed upon time frame after receipt of notice of the Defect, the Customer shall be entitled to a full refund of fees paid by it and shall have the right to terminate the SOW as provided for in the Termination Article herein. Customer's rights hereunder are in addition to any other rights Customer may have.

5.5 Contractor represents and warrants that neither the software provided by or through it under this Agreement, nor any enhancements thereto shall contain a disabling code, lockup program or device. Contractor further agrees that it will not, under any circumstances including enforcement of a valid contract right, (a) install or trigger a lockup program or device, or (b) take any step which would in any manner interfere with Customer's lawful licensed use of the software, or enhancements and/or which would restrict Customer from lawfully accessing its data files or in any way interfere with the transaction of Customer's lawful business. For any breach of this warranty, Contractor at its expense shall, within ten (10) business days after receipt of notification of the breach, deliver software and/or enhancements to Customer that are free of such disabling code, lockup program or device.

5.6 Contractor represents and warrants that neither the software, nor any enhancements delivered to Customer, as of the date of such delivery, will contain a computer virus. For purposes of this provision, a computer virus shall be defined as code intentionally inserted in the software or enhancements that will damage or destroy Customer's applications or data. For any breach of this warranty, Contractor at its expense shall, within five (5) business days after receipt of notification of the breach, rid the software/enhancement of the virus, or deliver products to Customer that are free of any virus, and shall be responsible for repairing, at Contractor's expense, the reasonable costs of repairing any and all damage done by the virus to Customer's site.

5.7 The Contractor represents and warrants that, upon completion of a project requiring the development of Original Fee for Service Project Software, the Contractor, and all subcontractors, if any, shall convey to the State copies of the Contractor Materials, as defined herein, directly related to the Original Fee for Service Project Software.

5.8 Contractor represents and warrants that it has obtained all necessary rights to permit use of the graphics on any site developed or hosted under this Agreement and that the Contractor shall provide the State with evidentiary proof of graphic licenses and releases on request. Further, the Contractor represents and warrants that all Contractor-supplied graphics and content contains no libelous material.

5.9 The Contractor represents and warrants that the deliverables provided to the State under this Agreement, to the extent same are provided by Contractor or Contractor's subcontractor, or developed by Contractor, and their use by active users in accordance with Contractor's instructions and the terms of this Agreement, will not infringe or constitute an infringement of any copyright, patent, trademark, servicemark, trade secret or other proprietary right of any person or entity. Customer agrees that it will promptly notify Contractor in writing of any such claim or action of which it has knowledge, and that it will cooperate fully in the defense and investigation of the claim by supplying Contractor all reasonably relevant information currently available and in its possession, all at Contractor's expense. Contractor shall, to the extent authorized by Mississippi law, have sole control over the defense or settlement of any such claim or action. Contractor, at its own expense, shall defend or settle any and all infringement actions filed against Contractor or the State which involve the deliverables or other items that are developed by Contractor or provided by Contractor and its subcontractors under this Agreement and shall pay all settlements, as well as all costs, attorney fees, damages and judgment finally awarded against the State for products found to be infringing. If, in any such suit arising from such claim, the continued use of the items for the purpose intended is enjoined or threatened to be enjoined by any court of competent jurisdiction, Contractor shall, at its expense: (a) procure for the State the right to continue using such items, or (b) modify or replace them with non-infringing items with equivalent functionality, or, to the extent (a) or (b) cannot be done despite Contractor's commercially reasonable efforts, (c) refund to the State the fees previously paid by the State for the infringing products. Said refund shall be paid within ten (10) business days of notice to the State to discontinue said use unless Contractor is electing to proceed under subsections (a) or (b) herein. In addition to the foregoing, the Contractor acknowledges that it owes indemnification obligations to the State in accordance with the provisions of Article 16 herein.

5.10 Contractor represents and warrants that the systems provided pursuant to this Agreement will pass both internal security audits and independent security audits. For any breach of the preceding warranty at any time during which the system is covered by warranty and/or software support, Contractor shall, at its own expense and at no cost to Customer, remediate any defect, anomaly or security vulnerability in the system by repairing and/or replacing any and all components of the system necessary in order for the system to be secure.

5.11 Contractor represents and warrants that it will ensure its compliance with the Mississippi Employment Protection Act, Section 71-11-1, et seq. of the Mississippi Code Annotated (Supp2008), and will register and participate in the status verification system for all newly hired

employees. The term “employee” as used herein means any person that is hired to perform work within the State of Mississippi. As used herein, “status verification system” means the Illegal Immigration Reform and Immigration Responsibility Act of 1996 that is operated by the United States Department of Homeland Security, also known as the E-Verify Program, or any other successor electronic verification system replacing the E-Verify Program. Contractor agrees to maintain records of such compliance and, upon request of the State and approval of the Social Security Administration or Department of Homeland Security, where required, to provide a copy of each such verification to the State. Contractor further represents and warrants that any person assigned to perform services hereunder meets the employment eligibility requirements of all immigration laws of the State of Mississippi. Contractor understands and agrees that any breach of these warranties may subject Contractor to the following: (a) termination of this Agreement and ineligibility for any state or public contract in Mississippi for up to three (3) years, with notice of such cancellation/termination being made public, or (b) the loss of any license, permit, certification or other document granted to Contractor by an agency, department or governmental entity for the right to do business in Mississippi for up to one (1) year, or (c) both. In the event of such termination/cancellation, Contractor would also be liable for any additional costs incurred by the State due to contract cancellation or loss of license or permit.

5.12 Contractor represents and warrants that no official or employee of Customer or of ITS, and no other public official of the State of Mississippi who exercises any functions or responsibilities in the review or approval of the undertaking or carrying out of the project shall, prior to the completion of said project, voluntarily acquire any personal interest, direct or indirect, in this Agreement. The Contractor warrants that it has removed any material conflict of interest prior to the signing of this Agreement, and that it shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its responsibilities under this Agreement. The Contractor also warrants that in the performance of this Agreement no person having any such known interests shall be employed.

5.13 The Contractor represents and warrants that no elected or appointed officer or other employee of the State of Mississippi, nor any member of or delegate to Congress has or shall benefit financially or materially from this Agreement. No individual employed by the State of Mississippi shall be admitted to any share or part of the Agreement or to any benefit that may arise therefrom. The State of Mississippi may, by written notice to the Contractor, terminate the right of the Contractor to proceed under this Agreement if it is found, after notice and hearing by the ITS Executive Director or his/her designee, that gratuities in the form of entertainment, gifts, jobs, or otherwise were offered or given by the Contractor to any officer or employee of the State of Mississippi with a view toward securing this Agreement or securing favorable treatment with respect to the award, or amending or making of any determinations with respect to the performing of such contract, provided that the existence of the facts upon which the ITS Executive Director makes such findings shall be in issue and may be reviewed in any competent court. In the event this Agreement is terminated under this article, the State of Mississippi shall be entitled to pursue the same remedies against the Contractor as it would pursue in the event of

a breach of contract by the Contractor, including punitive damages, in addition to any other damages to which it may be entitled at law or in equity.

5.14 The parties agree that there are no other express warranties other than as stated in this Agreement.

ARTICLE 6 EMPLOYMENT STATUS

6.1 Contractor shall, during the entire term of this Agreement, be construed to be an independent contractor. Nothing in this Agreement is intended to nor shall be construed to create an employer-employee relationship, or a joint venture relationship.

6.2 Contractor represents that it is qualified to perform the duties to be performed under this Agreement and that it has, or will secure, if needed, at its own expense, applicable personnel who shall be qualified to perform the duties required under this Agreement. Such personnel shall not be deemed in any way, directly or indirectly, expressly or by implication, to be employees of Customer.

6.3 Any person assigned by Contractor to perform the services hereunder shall be the employee of Contractor, who shall have the sole right to hire and discharge its employee. Customer may, however, direct Contractor to replace any of its employees under this Agreement.

6.4 Contractor shall pay when due, all salaries and wages of its employees and it accepts exclusive responsibility for the payment of federal income tax, state income tax, social security, unemployment compensation and any other withholdings that may be required. Neither Contractor nor employees of Contractor are entitled to state retirement or leave benefits.

6.5 It is further understood that the consideration expressed herein constitutes full and complete compensation for all services and performances hereunder, and that any sum due and payable to Contractor shall be paid as a gross sum with no withholdings or deductions being made by Customer for any purpose from said contract sum, except as permitted herein in the article titled "Termination".

ARTICLE 7 BEHAVIOR OF EMPLOYEES/SUBCONTRACTORS

Contractor will be responsible for the behavior of all its employees and subcontractors while on the premises of any Customer location. Any employee or subcontractor acting in a manner determined by the administration of that location to be detrimental, abusive or offensive to any of the staff and/or student body, will be asked to leave the premises and may be suspended from further work on the premises. All Contractor employees and subcontractors who will be working at such locations shall be covered by Contractor's comprehensive general liability insurance policy.

ARTICLE 8 MODIFICATION OR RENEGOTIATION

This Agreement may be modified only by written agreement signed by the parties hereto, and any attempt at oral modification shall be void and of no effect. The parties agree to renegotiate the Agreement if federal and/or state revisions of any applicable laws or regulations make changes in this Agreement necessary.

ARTICLE 9 AUTHORITY, ASSIGNMENT AND SUBCONTRACTS

9.1 In matters of proposals, negotiations, contracts, and resolution of issues and/or disputes, the parties agree that Contractor represents all contractors, third parties, and/or subcontractors Contractor has assembled for this project. The Customer is required to negotiate only with Contractor, as Contractor's commitments are binding on all proposed contractors, third parties, and subcontractors.

9.2 Neither party may assign or otherwise transfer this Agreement or its obligations hereunder without the prior written consent of the other party, which consent shall not be unreasonably withheld. Any attempted assignment or transfer of its obligations without such consent shall be null and void. This Agreement shall be binding upon the parties' respective successors and assigns.

9.3 Contractor must obtain the written approval of Customer before subcontracting any portion of this Agreement. No such approval by Customer of any subcontract shall be deemed in any way to provide for the incurrence of any obligation of Customer in addition to the total fixed price agreed upon in this Agreement. All subcontracts shall incorporate the terms of this Agreement and shall be subject to the terms and conditions of this Agreement and to any conditions of approval that Customer may deem necessary.

9.4 Contractor represents and warrants that any subcontract agreement Contractor enters into shall contain a provision advising the subcontractor that the subcontractor shall have no lien and no legal right to assert control over any funds held by the Customer, and that the subcontractor acknowledges that no privity of contract exists between the Customer and the subcontractor and that the Contractor is solely liable for any and all payments which may be due to the subcontractor pursuant to its subcontract agreement with the Contractor. The Contractor shall indemnify and hold harmless the State from and against any and all claims, demands, liabilities, suits, actions, damages, losses, costs and expenses of every kind and nature whatsoever arising as a result of Contractor's failure to pay any and all amounts due by Contractor to any subcontractor, materialman, laborer or the like.

9.5 All subcontractors shall be bound by any negotiation, arbitration, appeal, adjudication or settlement of any dispute between the Contractor and the Customer, where such dispute affects the subcontract.

ARTICLE 10 AVAILABILITY OF FUNDS

It is expressly understood and agreed that the obligation of Customer to proceed under this

Agreement or any SOW, to the extent the project under the Agreement and/or SOW is a Fee For Service Project, is conditioned upon the appropriation of funds by the Mississippi State Legislature and the receipt of state and/or federal funds for the performances required under this Agreement or any SOW. If the funds anticipated for the fulfillment of this Agreement or any SOW with respect to Fee For Service Projects are not forthcoming, or are insufficient, either through the failure of the federal government to provide funds or of the State of Mississippi to appropriate funds, or if there is a discontinuance or material alteration of the program under which funds were available to Customer for the payments or performance due under this Agreement or any SOW, Customer shall have the right to immediately terminate this Agreement and/or SOW, with respect to Fee For Service Projects, without damage, penalty, cost or expense to Customer of any kind whatsoever. The effective date of termination shall be as specified in the notice of termination. Customer shall have the sole right to determine whether funds are available for the payments or performances due under this Agreement and/or SOW.

ARTICLE 11 TERMINATION

11.1 Notwithstanding any other provision of this Agreement to the contrary, this Agreement and/or SOW 001: Payment Processor Solution (“SOW 001”) entered into hereunder may be terminated as follows: (a) upon the mutual, written agreement of the parties; (b) If either party fails to comply with the terms of this Agreement and/or SOW 001, the non-defaulting party may terminate the Agreement or SOW 001 (if the default occurs under SOW 001) upon the giving of thirty (30) business days written notice unless the breach is cured within said thirty (30) business day period, or within such other period as may be agreed upon by the parties; (c) Customer may terminate the Agreement or SOW 001 without the assessment of any penalties upon thirty (30) business days written notice to Contractor if Contractor becomes the subject of bankruptcy, reorganization, liquidation or receivership proceedings, whether voluntary or involuntary, or (d) Contractor may terminate this Agreement if Contractor’s portion of Net Revenue decreases to the point that solvent financial operations of the E-Government business model are not sustainable or cease, as determined by financial results for the previous six (6) months, and no substitute funding is available at a comparable level. Contractor may pursue the termination stated in subsection (d) and proceed with transition services to be provided in accordance with a mutually agreed upon transition plan only after the following conditions have been met: (i) Contractor provides written notice to Customer of the insolvency of the E-Government business model which notice may request a proposed reduction of certain services or termination of the Agreement; (ii) the parties meet and confer regarding alternative funding or reduction of services; and (iii) the parties are unable, after three (3) months from Customer’s receipt of the notice, to agree on a solution. The provisions of this Article do not limit either party’s right to pursue any other remedy available at law or in equity. Termination of the Agreement shall automatically terminate all SOWs, excluding SOW 001, provided, however, that the incorporated terms and conditions of this Agreement shall survive until the expiration/termination of SOW 001. Termination by the Customer under Section (b) and (c), herein, shall be deemed “Termination by the State for Just Cause” as that term is utilized in Article 28.4. Termination by Contractor under section (b) or (d), herein, shall be deemed

termination for cause by Contractor.

11.2 With the exception of SOW 001, termination of SOWs will be addressed in the SOW template attached hereto as Exhibit B.

ARTICLE 12 GOVERNING LAW

This Agreement shall be construed and governed in accordance with the laws of the State of Mississippi and venue for the resolution of any dispute shall be Jackson, Hinds County, Mississippi. Contractor expressly agrees that under no circumstances shall Customer be obligated to pay an attorney's fee, prejudgment interest or the cost of legal action to Contractor. Further, nothing in this Agreement shall affect any statutory rights Customer may have that cannot be waived or limited by contract.

ARTICLE 13 WAIVER

Failure of either party hereto to insist upon strict compliance with any of the terms, covenants and conditions hereof shall not be deemed a waiver or relinquishment of any similar right or power hereunder at any subsequent time or of any other provision hereof, nor shall it be construed to be a modification of the terms of this Agreement. A waiver by either party, to be effective, must be in writing, must set out the specifics of what is being waived, and must be signed by an authorized representative of the party waiving its right.

ARTICLE 14 SEVERABILITY

If any term or provision of this Agreement is prohibited by the laws of the State of Mississippi or declared invalid or void by a court of competent jurisdiction, the remainder of this Agreement shall be valid and enforceable to the fullest extent permitted by law provided that the State's purpose for entering into this Agreement can be fully achieved by the remaining portions of the Agreement that have not been severed.

ARTICLE 15 CAPTIONS

The captions or headings in this Agreement are for convenience only, and in no way define, limit or describe the scope or intent of any provision or Article in this Agreement.

ARTICLE 16 HOLD HARMLESS

16.1 To the fullest extent allowed by law, Contractor shall indemnify, defend, save and hold harmless, protect and exonerate Customer, ITS and the State, its Board Members, officers, employees, agents and representatives from and against any and all claims, demands, liabilities, suits, actions, damages, losses, costs and expenses of every kind and nature whatsoever, including without limitation, court costs, investigative fees and expenses, attorney fees and claims for damages arising out of or caused by the negligence and/or willful misconduct of Contractor and/or its partners, principals, agents, employees or subcontractors in the performance of or failure to perform this Agreement.

16.2 Notwithstanding anything contained herein to the contrary, the parties agree that Contractor shall have no liability or obligation to indemnify any party to the extent the claim, loss, penalty or action is caused by the negligence or misconduct of the State, ITS or any other agency or State subdivision, or the employees, agents or contractors of any of the foregoing.

ARTICLE 17 THIRD PARTY ACTION NOTIFICATION

Contractor shall notify Customer in writing within five (5) business days of Contractor filing bankruptcy, reorganization, liquidation or receivership proceedings or within five (5) business days of its receipt of notification of any action or suit being filed or any claim being made against Contractor or Customer by any entity that may result in litigation related in any way to this Agreement and/or which may affect the Contractor's performance under this Agreement. Failure of the Contractor to provide such written notice to Customer shall be considered a material breach of this Agreement and the Customer may, at its sole discretion, pursue its rights as set forth in the Termination Article herein and any other rights and remedies it may have at law or in equity.

ARTICLE 18 AUTHORITY TO CONTRACT

Contractor warrants that it is a validly organized business with valid authority to enter into this Agreement; that entry into and performance under this Agreement is not restricted or prohibited by any loan, security, financing, contractual or other agreement of any kind, and notwithstanding any other provision of this Agreement to the contrary, that there are no existing legal proceedings, or prospective legal proceedings, either voluntary or otherwise, which may adversely affect its ability to perform its obligations under this Agreement.

ARTICLE 19 NOTICE

Any notice required or permitted to be given under this Agreement shall be in writing and personally delivered or sent by electronic means provided that the original of such notice is sent by certified United States mail, postage prepaid, return receipt requested, or overnight courier with signed receipt, to the party to whom the notice should be given at their business address listed herein. ITS' address for notice is: Mr. David L. Litchliter, Executive Director, Mississippi Department of Information Technology Services, 301 North Lamar Street, Suite 508, Jackson, Mississippi 39201. DFA's address for notice is: Ms. Cille Litchfield, Deputy Director, Mississippi Department of Finance and Administration, 501 North West Street, Suite 1201A, Jackson, Mississippi 39201. The Contractor's address for notice is: Mr. Will Prible, President, Mississippi Interactive, LLC, 120 North Congress Street, Suite 650, Jackson, Mississippi 39201, or his successor, with a copy to: Mr. William F. Bradley, Jr., General Counsel, NICUSA, Inc., 25501 West Valley Parkway, Suite 300, Olathe, Kansas 66061, or his successor, and to Mr. Winn McInnis, Regional Manager, NICUSA, Inc., 120 North Congress Street, Suite 650, Jackson, Mississippi 39201, or his successor. Notice shall be deemed given when actually received or when refused. The parties agree to promptly notify each other in writing of any change of address.

ARTICLE 20 RECORD RETENTION AND ACCESS TO RECORDS

Contractor shall establish and maintain financial records, supporting documents, statistical records and such other records as may be necessary to reflect its performance of the provisions of this Agreement. The Customer, ITS, any state or federal agency authorized to audit Customer, and/or any of their duly authorized representatives, shall have reasonable access upon prior, reasonable notice to Contractor, and at no out-of-pocket cost to Contractor, to this Agreement and to the Contractor's proposals, books, documents, papers and/or records that are pertinent to the Portal Operations being performed under this Agreement to make audits, copies, examinations, excerpts and transcriptions at the State's or Contractor's office as applicable where such records are kept during normal business hours. All records relating to this Agreement shall be retained by the Contractor for three (3) years following the date of termination/expiration of this Agreement. However, if any litigation or other legal action, by or for the state or federal government has begun that is not completed at the end of the three (3) year period, or if an audit finding, litigation or other legal action has not been resolved at the end of the three (3) year period, the records shall be retained until resolution. The accessibility and disclosure described in this Article will not, by itself, cause any such records that constitute Contractor Confidential Information to lose their protected status hereunder.

ARTICLE 21 INSURANCE

Contractor represents that it will maintain workers' compensation insurance as prescribed by law which shall inure to the benefit of Contractor's personnel, as well as comprehensive general liability and employee fidelity bond insurance. Contractor will, upon request, furnish Customer with a certificate of conformity providing the aforesaid coverage.

ARTICLE 22 DISPUTES

Any dispute concerning a question of fact under this Agreement which is not disposed of by agreement of the Contractor and Customer, shall be decided by the Executive Director of ITS or his/her designee. This decision shall be reduced to writing and a copy thereof mailed or furnished to the parties. Disagreement with such decision by either party shall not constitute a breach under the terms of this Agreement. Such disagreeing party shall be entitled to seek such other rights and remedies it may have at law or in equity.

ARTICLE 23 COMPLIANCE WITH LAWS

Contractor shall comply with, and all activities under this Agreement shall be subject to, all Customer policies and procedures, and all applicable federal, state, and local laws, regulations, policies and procedures as now existing and as may be amended or modified. Specifically, but not limited to, Contractor shall not discriminate against any employee nor shall any party be subject to discrimination in the performance of this Agreement because of race, creed, color, sex, age, national origin or disability.

ARTICLE 24 CONFLICT OF INTEREST

Contractor shall notify the Customer of any potential conflict of interest resulting from the

representation of or service to other clients. If such conflict cannot be resolved to the Customer's satisfaction, the Customer reserves the right to terminate this Agreement.

ARTICLE 25 SOVEREIGN IMMUNITY

By entering into this Agreement with Contractor, the State of Mississippi does in no way waive its sovereign immunities or defenses as provided by law.

ARTICLE 26 CONFIDENTIAL INFORMATION

Notwithstanding anything contained in this Agreement or the RFP to the contrary, the parties agree that the following provisions shall govern.

26.1 Contractor and Customer shall treat each other's data and information to which it has access by its performance under this Agreement as confidential and shall not disclose such data or information to a third party without specific written consent of the other party, or as otherwise allowed/mandated by applicable law. In the event that either party receives notice that a third party requests divulgence of confidential or otherwise protected information and/or has served upon it a subpoena or other validly issued administrative or judicial process ordering divulgence of such information, that party shall promptly inform the other party and thereafter respond in conformity with such subpoena to the extent mandated by state and/or federal laws, rules and regulations. This Article shall survive the termination or completion of this Agreement and shall continue in full force and effect and shall be binding upon the parties and their agents, employees, successors, assigns, subcontractors or any party or entity claiming an interest in this Agreement on behalf of, or under the rights of the parties following any termination or completion of this Agreement.

26.2 With the exception of any attached exhibits which are labeled as "confidential", the parties understand and agree that this Agreement, including any amendments and/or change orders thereto, does not constitute confidential information, and may be reproduced and distributed by the State without notification to Contractor. Customer will provide third party notice to Contractor of any requests received by Customer for any such confidential exhibits or the Contractor Confidential Information identified in this Article so as to allow Contractor the opportunity to protect the information by court order as outlined in ITS public records policy. Customer will reasonably cooperate with Contractor in its efforts to protect the information.

26.3 Customer acknowledges that the Portal Software and Source Code, including the Intellectual Property embodied therein, are proprietary confidential information of Contractor or its Affiliates. Customer agrees to take all steps necessary to protect the Portal Software and Source Code from unauthorized use or copying, including, but not limited to, obtaining written agreements, and instructing its employees with respect to the proprietary nature of the Portal Software and Source Code and the restrictions on the use granted to Customer. Customer acknowledges that the Portal Software and Source Code are not public record. If a request is made to view the Portal Software or Source Code, (other than by an Authorized Contractor) Customer will notify Contractor of the request and cooperate with Contractor in obtaining a court

order or other protection against disclosure.

26.4 The parties hereto acknowledge that Customer (and most State related agencies, etc.) are subject to the State public records access laws, (the “Public Records Act”), which is codified at Section 25-61-1, et seq. of the 1972 Mississippi Code Annotated, as amended, and provides generally that records relating to a public agency’s business are open to public inspection and copying unless exempted under the Public Records Act. Subject to the foregoing, the State and Customer will use their reasonable best efforts to treat information relating to Portal Operations and received from Contractor as confidential and comply with the provisions of this Article 26.4 where (a) Contractor specifically advises the State that it desires such information be kept confidential and (b) such information falls within an exemption under the State’s public record laws. The State will not be deemed to be in violation of the Agreement if it discloses or makes available to the public any information regarding the State Portal as and to the extent such disclosure is required pursuant to or under the Public Records Act, provided however that it provides to Contractor advance notice as established by ITS’ public records policy of its intention to comply with any such request, so that Contractor may have an opportunity to challenge the provision of such documents if it chooses to do so.

26.5 When Contractor furnishes or discloses information produced or generated by Contractor, deemed by Contractor to be confidential, proprietary or trade secret and such information is furnished or disclosed in a tangible form, it shall clearly mark the information in a manner to indicate that it is considered proprietary, confidential, trade secret or otherwise subject to limited distribution as provided herein. The State acknowledges it will follow ITS’ public records policy.

26.6 When Contractor furnishes or discloses information Contractor deems to be confidential, proprietary, or trade secret in a verbal or intangible form, it shall, at the time of disclosure, clearly identify the information as being proprietary, confidential or a trade secret, or otherwise subject to limited distribution as provided herein.

26.7 Subject to the requirements of State public record laws, the State agrees not to disclose or produce for any purpose, including in response to a subpoena or other court or governmental order, without giving Contractor or its successors, assigns, parents, or subsidiaries advance written notice as set forth in ITS’ public records policy, and an opportunity to object to the disclosure or production of any of the confidential, proprietary, or trade secret information of Contractor or its corporate parent, affiliates, and subsidiaries (collectively referred to herein as the “Contractor Confidential Information”). At the request of the State, Contractor shall provide such reasonable assistance as may be requested by the State to comply with this provision.

26.8 All other State governmental agencies and personnel shall be subject to the same requirement of confidentiality, if Contractor Confidential Information, marked as confidential, is disclosed to such entity.

26.9 Notwithstanding anything to the contrary herein, the State may disclose, in response to specific requests, records pertaining to the operation of the Portal that do not contain Contractor Confidential Information or separately identifiable Portal customer or user information.

26.10 Contractor acknowledges that all confidential information for which access is made available to Contractor by the State or by any agency, is and remains the confidential property and records of the State. Contractor agrees that it (i) will not disclose such confidential information of the State to any person or entity unless necessary or appropriate to further the objectives of this Agreement or otherwise required by law or court order, and (ii) will not distribute, sell or make any use whatsoever of any confidential information other than for the purposes expressly described in this Agreement. If Contractor makes available or discloses any such State owned confidential information to its corporate parent, affiliates, subsidiaries or any State-approved third-party subcontractor in order to further the objectives of this Agreement, it shall (a) give such reasonable prior notice to the State of its intention, as is practical, and (b) require such party to agree in writing to the confidentiality requirements of this Agreement.

ARTICLE 27 EFFECT OF SIGNATURE

Each person signing this Agreement represents that he or she has read the Agreement in its entirety, understands its terms, is duly authorized to execute this Agreement on behalf of the parties and agrees to be bound by the terms contained herein. Accordingly, this Agreement shall not be construed or interpreted in favor of or against the State or the Contractor on the basis of draftsmanship or preparation hereof.

ARTICLE 28 OWNERSHIP AND LICENSE TERMS

28.1 Ownership: All State trademarks, trade names, logos and other State identifiers, Internet uniform resource locators, Internet addresses and e-mail addresses obtained or developed pursuant to this Agreement shall be the property of State. All content and all property, data and information furnished by or on behalf of the State or any agency, commission or board thereof, to Contractor to facilitate Contractor's performance under the Agreement and State Software ("State Materials") shall be and remain the sole property of the State. Any changes with respect to State Software will be addressed in the applicable SOW. With the exception of the license rights expressly granted hereunder, all rights, title and interest in the Portal Software (including Source Code) in all formats and media, including any modifications, revisions, corrections or enhancements thereto, and including any inventions, discoveries, ideas, methods, concepts, methodologies, models, templates, user interfaces, screen designs, works of authorship, materials, know-how, information, procedures, processes, techniques, tools, designs, routines, utilities, prototypes and data embodied therein (the "Intellectual Property") are and shall remain the exclusive property of Contractor or its Affiliates.

28.2 Notwithstanding anything contained in this Agreement to the contrary, the parties acknowledge and agree that State Software and Original Fee for Service Project Software are and

shall be the exclusive property of the State. Ownership of the Original Fee for Service Project Software shall vest upon full payment of all fees due to Contractor for the development of the same. Licensing rights granted to Contractor in Original Fee for Service Project Software shall be determined by the parties on a case-by-case basis in advance of any development. The parties expressly understand and agree that the grant of ownership of Original Fee for Service Project Software contained herein shall in no way preclude Contractor, or its Affiliates, from developing or assisting in the development of software or products that are similar or competitive with the Original Fee for Service Project Software developed hereunder.

28.3 Use of Electronic Services: During the term of this Agreement, Contractor will provide access to the functionality of the Electronic Services through the Portal, for the Permitted Purpose. Access to the Electronic Services for Contractor shall terminate upon termination/expiration of this Agreement; provided however, that the State or any subsequent contractor operating the Portal may contract for Electronic Services separately and apart from Contractor at commercially competitive rates. The State does not have any rights to have or to make copies or archival copies of any software used in the Electronic Services during the term of the Agreement or following its termination or expiration. Nothing in the preceding clause shall be construed to eliminate the State's right to receive Payment Processing Services pursuant to SOW 001 in the event SOW 001 survives termination of the Agreement. In such an instance, the term of SOW 001 shall be for the remainder of the unexpired Agreement term.

28.4 License Grant Upon Termination by the State For Just Cause and Expiration of Initial Term: Upon the termination of this Agreement by the State For Just Cause, as defined in Article 11.1, herein, or upon expiration of the Initial Term of this Agreement, Contractor shall grant to the State a perpetual, For Use Only, fully paid-up, non-exclusive, license to host (in object code only), copy, modify, enhance, use, and execute the Portal Software and Source Code for the Portal Software for the Permitted Uses, subject to the limitations of this Agreement. At the end of any Renewal Term of the Agreement ("Renewal Expiration Date"), or in the event the Agreement is terminated by the State for Just Cause during a Renewal Period, the State shall receive a license, on the same terms, conditions and limitations as contained herein, to the Portal Software deployed during that Renewal Term. There shall be no license fee associated with said license, and the license shall be granted as of the Renewal Expiration Date or the date the Agreement is terminated by the State for Just Cause, as applicable. Specifically, subject to the above limitations, the State will have the right to: (i) make copies of the Portal Software and Source Code, for archival, testing or back-up purposes, or for development of modifications and enhancements for the Permitted Uses; (ii) modify the Portal Software or Source Code as may be required or desirable for the maintenance or enhancement of the Portal Software or the Portal; (iii) load the Portal Software on any State approved systems for the Permitted Uses; (iv) use State employees or Authorized Portal Contractors to maintain, repair, modify or enhance the Portal Software and Source Code for the Permitted Uses; and (v) allow Users access to the functions of the Portal Software (but not the Source Code) through the Portal solely for Permitted Uses. In addition, upon expiration or termination of the Agreement without renewal, or

upon expiration or termination of the Agreement without a subsequent agreement similar to this Agreement being executed by the parties, and to the extent the State has received a license to Portal Software, Contractor shall convey title to the hardware used solely for the Portal Operations and located in Mississippi to the State. License rights to Third Party Software used to operate the Portal shall, at the State's option, be transferred to the State by Contractor, to the extent permissible under the applicable Third Party license terms, upon the expiration or termination of the Agreement without renewal or upon the expiration or termination of the Agreement without a subsequent agreement similar to this Agreement being executed by the parties. Software that is Third Party Software and which is not transferable to the State shall be identified and described by Contractor on a list at the time of Agreement termination or at any other time as specified by the State during the term of the Agreement. Contractor makes no warranties with respect to Third Party Software and other materials, and the only warranties the State receives are the transferable warranties, if any, made by third party licensors and vendors. As used in this Agreement, the term "Third Party Software" shall mean software or documentation created by third parties (other than Contractor, or its portal Affiliates) and purchased by or licensed to Contractor.

28.5 Option of the State After Termination: Upon the termination by either party of the Agreement pursuant to the terms thereof (other than Termination by the State For Just Cause), the State may purchase a license to the Portal Software upon the payment of a mutually agreed to license fee. Such license shall be a perpetual, personal, fully paid-up, non-exclusive, For Use Only license, to host (in object code only), copy, modify, enhance, use, and execute the Portal Software and Source Code for the Permitted Uses, and such license agreement will contain limitations on use and disclosure similar to those contained in this Agreement. During the Initial Term, and with respect to the Portal Software deployed during the Initial Term, the mutually agreed to license fee shall consist of a one-time payment to Contractor equal to: a mutually agreeable license base fee multiplied by a fraction, (a) the numerator of which is sixty (60) minus the number of months that have elapsed under the Initial Term and (b) the denominator of which is sixty (60).

28.6 In the event the Agreement is terminated prior to the Renewal Expiration Date for any reason other than by the State For Just Cause, the State may receive a license to the Portal Software deployed on the Portal during said Renewal Term, on the same terms and conditions as contained in this Agreement, upon payment of a licensing fee to be calculated as follows. During any Renewal Term, and with respect to the Portal Software deployed during the relevant Renewal Term, the mutually agreed to license fee shall consist of a one-time payment to Contractor equal to: a mutually agreeable license base fee multiplied by a fraction, (a) the numerator of which is twenty-four (24) minus the number of months that have elapsed under the Renewal Term of the Agreement and (b) the denominator of which is twenty-four (24). In no case shall the formula be calculated so as to result in any payment from Contractor to the State.

28.7 Reserved Rights: Contractor reserves all rights not expressly licensed to the State

under this Agreement. The license rights granted or to be granted in this Article 28 are subject to the other restrictions and terms contained in this Agreement.

28.8 Markings; Limitations: Any and all copies of the Portal Software, or the Source Code made by the State shall bear Contractor's notice of copyright, and other restrictive legends contained on the Portal Software and Source Code provided by Contractor. The State shall have no rights to provide, sell, or distribute copies of the Portal Software and Source Code or any derivative works that incorporate any part thereof, to any third parties, subject to the State's rights to retain Authorized Portal Contractors as provided for in Article 28.4(iv).

28.9 Confidentiality of Portal Software: Customer acknowledges on behalf of itself and the State that the Portal Software and Source Code, including the Intellectual Property embodied therein, are proprietary confidential information of Contractor or its Affiliates. Customer on behalf of itself and the State agrees to take reasonable steps necessary to protect the Portal Software and Source Code from unauthorized use or copying, including, but not limited to, obtaining written agreements, and instructing its employees with respect to the proprietary nature of the Portal Software and Source Code and the restrictions on the use granted hereunder. Customer acknowledges on behalf of itself and the State that the Portal Software and Source Code are not public record. If a request is made to view the Portal Software or Source Code, (other than by an Authorized Contractor) Customer or the State will notify Contractor of the request prior to its release, and cooperate with Contractor, at Contractor's expense, in obtaining a court order or other protection against disclosure.

28.10 Disclaimer: Contractor and its Affiliates and their directors, officers, and employees shall not be liable for any losses, costs, expenses, including reasonable attorneys fees, arising out of or related to the use or modification or enhancement of the Portal Software, Original Fee for Service Project Software, or the Source Code either by the State or any third party, or caused by any modifications or changes to the operating platform or environment on which or with which the Portal Software, Original Fee for Service Project Software, or Source Code are operated. Contractor is not responsible to maintain any software following termination or expiration of this Agreement. This Article 28.10 does not include the period of time under which Contractor is performing work under the Agreement.

28.11 Contractor Records: Contractor retains ownership rights in and to the business and company reports, and the internal business and company records, which are not licensed to the State. Contractor also retains ownership rights to pre-existing designs, user documentation, survey materials, portal operation reports and records and other works of authorship, and any modifications and improvements made to any such materials whether made under this Agreement or otherwise ("Contractor Materials"). Upon conveyance of a license to the Portal Software, Contractor shall grant the State a perpetual, non-exclusive, limited and paid-up license to use and modify Contractor Materials to the extent used in the Portal and necessary for the continued operation, maintenance and enhancement of the Portal.

28.12 The parties agree that in the event the State engages Contractor to develop Fee for Service Project software that is not built from scratch, the same shall be considered “Portal Software,” but the State shall receive a license to such software (the “Modified Fee for Service Project Software”) upon payment of all fees due to Contractor from the State for the development of the same. Except with respect to the date upon which the license to the Modified Fee for Service Project Software is granted to the State, such license shall be subject to all of the terms, conditions and limitations related to Portal Software as contained in this Agreement

ARTICLE 29 NON-SOLICITATION OF EMPLOYEES

Contractor and Customer agree not to employ or to solicit for employment, directly or indirectly, each other’s employees (including the employees of Contractor’s parent company or affiliates) until at least one (1) year after the expiration/termination of this Agreement unless mutually agreed to the contrary in writing by the Customer and the Contractor and provided that such an agreement between these two entities is not a violation of the laws of the State of Mississippi or the federal government.

ARTICLE 30 ENTIRE AGREEMENT

30.1 This Agreement constitutes the entire agreement of the parties with respect to the subject matter contained herein and supersedes and replaces any and all prior negotiations, understandings and agreements, written or oral, between the parties relating thereto. The RFP No. 3564 and NICUSA’s Proposal, as accepted by Customer, in response to RFP No. 3564, which Contractor hereby agrees to be bound by and assume, are hereby incorporated into and made a part of this Agreement.

30.2 The contract made by and between the parties hereto shall consist of, and precedence is hereby established by the order of the following:

- A.** This Agreement signed by the parties hereto;
- B.** Any exhibits attached to this Agreement;
- C.** SOW 001 Payment Processor Solution;
- D.** Statements of Work signed by the parties;
- E.** RFP No. 3564 and written addenda, and
- F.** Contractor’s Proposal, as accepted by Customer, in response to RFP No. 3564.

30.3 The intent of the above listed documents is to include all items necessary for the proper execution and completion of the services by the Contractor. The documents are complementary, and what is required by one shall be binding as if required by all. A higher order document shall supersede a lower order document to the extent necessary to resolve any conflict or inconsistency arising under the various provisions thereof; provided, however, that in the event an issue is addressed in one of the above mentioned documents but is not addressed in another of such

documents, no conflict or inconsistency shall be deemed to occur by reason thereof. The documents listed above are shown in descending order of priority, that is, the highest document begins with the first listed document ("A. This Agreement") and the lowest document is listed last ("F. Contractor's Proposal").

ARTICLE 31 STATE PROPERTY

Contractor shall be responsible for the proper custody of any Customer-owned property furnished for Contractor's use in connection with work performed pursuant to this Agreement. Contractor shall reimburse the Customer for any loss or damage, normal wear and tear excepted.

ARTICLE 32 SURVIVAL

Articles 5.2, 5.5, 5.7, 5.14, 12, 16, 20, 25, 26, 28, 29, 39 (to the extent necessary for final reconciliation and settlement of funds), and 42 shall survive any termination or expiration of this Agreement.

ARTICLE 33 DEBARMENT AND SUSPENSION CERTIFICATION

Contractor certifies that neither it nor its principals: (a) are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any federal department or agency; (b) have, within a three (3) year period preceding this Agreement, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public (federal, state or local) transaction or contract under a public transaction; violation of federal or state anti-trust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property; (c) are presently indicted of or otherwise criminally or civilly charged by a governmental entity with the commission of fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public (federal, state or local) transaction or contract under a public transaction; violation of federal or state anti-trust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property, and (d) have, within a three (3) year period preceding this Agreement, had one or more public transaction (federal, state or local) terminated for cause or default.

ARTICLE 34 SPECIAL TERMS AND CONDITIONS

It is understood and agreed by the parties to this Agreement that there are no special terms and conditions.

ARTICLE 35 NETWORK SECURITY

Contractor and Customer understand and agree that the State of Mississippi's Enterprise Security Policy mandates that all remote access to and/or from the State network must be accomplished via a Virtual Private Network (VPN). If remote access is required at any time during the life of this Agreement, Contractor and Customer agree to implement/maintain a VPN for this connectivity. This required VPN must be IPsec-capable (ESP tunnel mode) and will terminate

on a Cisco VPN-capable device (i.e. VPN concentrator, PIX firewall, etc.) on the State's premises. Contractor agrees that it must, at its expense, implement/maintain a compatible hardware/software solution to terminate the specified VPN on the Contractor's premises. The parties further understand and agree that the State protocol standard and architecture are based on industry-standard security protocols and manufacturer engaged at the time of contract execution. The State reserves the right to introduce a new protocol and architecture standard and require the Contractor to comply with same, in the event the industry introduces a more secure, robust protocol to replace IPSec/ESP and/or there is a change in the manufacturer engaged.

ARTICLE 36 STATUTORY AUTHORITY

By virtue of Section 25-53-21 of the Mississippi Code Annotated, as amended, the executive director of ITS is the purchasing and contracting agent for the State of Mississippi in the negotiation and execution of all contracts for the acquisition of information technology equipment, software and services. The parties understand and agree that ITS as contracting agent is not responsible or liable for the performance or non-performance of any of Customer's or Contractor's contractual obligations, financial or otherwise, contained within this Agreement, except to the extent of Payment Processing Services, as further defined and detailed in SOW 001.

ARTICLE 37 ESCROW OF PORTAL SOFTWARE SOURCE CODE

37.1 Contractor shall deposit on a quarterly basis a copy of the data dictionary, documentation, object code, and Source Code for the most recent version of all Portal Software (excluding Third Party Software) in escrow with a neutral third party to be mutually chosen by Contractor and the State (the "Source Code") under the terms of an escrow agreement reasonably satisfactory to the State, Contractor and the escrow agent. During the Term of this Agreement, Contractor will have the authority to remove superseded Source Code. The copy of the Source Code shall be delivered to the State, at no cost to the State, by the escrow agent in the event (i) Contractor becomes the subject of bankruptcy, reorganization, liquidation or receivership proceedings, whether voluntary or involuntary; or (ii) Contractor is required to deliver Source Code as provided in Article 28.4, 28.5, and Article 28.6 in this Agreement; or (iii) as otherwise provided in the agreement with the escrow agent. The copy of the source code placed in escrow shall be reproduced and maintained on magnetic tape or disk using a commonly accepted data recording protocol. Program documentation sufficient to allow a competent programmer to use and maintain the source code programs must accompany the source code. When a change is made to the object code or Source Code during the term of the escrow agreement, the revised Source Code, shall be delivered to the escrow agent in the next quarterly deposit.

37.2 Contractor acknowledges that it will deliver a copy of the software escrow agreement between Contractor and its escrow agent to the State. Contractor shall obtain the consent of the State in writing to any material amendments to such agreement affecting the Source Code, any change in escrow agent, or of any replacement or successor escrow arrangements, such consent not to be unreasonably withheld.

37.3 The cost of the Source Code escrow shall be borne by Contractor, and paid out of the Portal's revenues as an operating expense. The State agrees that the copy of the Source Code shall be treated as the Confidential Information of Contractor notwithstanding termination or expiration of this Agreement, and that the Source Code may be used only for Permitted Uses for the State Portal.

ARTICLE 38 CHANGE ORDER RATE AND PROCEDURE

38.1 It is understood that the State may, at any time, by a written order, make changes in the scope of a Statement of Work executed under this Agreement. No changes in scope are to be conducted or performed by the Contractor except by the express written approval of the State. The Contractor shall be obligated to perform all changes requested by the Customer which have no price or schedule effect.

38.2 The Contractor shall have no obligation to proceed with any change that has a price or schedule effect until the parties have mutually agreed in writing thereto. Neither the State nor the Contractor shall be obligated to execute such a change order; if no such change order is executed, the Contractor shall not be obliged or authorized to perform services beyond the scope of this Agreement, the contract documents, and the applicable Statement of Work.

38.3 With respect to any change orders issued in accordance with this Article, the Contractor shall be compensated for work performed under a change order according to the hourly change order rate specified in Contractor's proposal in response to RFP No. 3564 which is incorporated herein. If there is a service that is not defined in the change order rate, the Contractor and the State will negotiate the rate. The Contractor agrees that each change order rate shall be a "fully loaded" rate, that is, it includes the cost of all materials, travel expenses, per diem, and all other expenses and incidentals incurred by the Contractor in the performance of the change order. The Contractor shall invoice the Customer upon acceptance by the Customer of all work documented in the change order, and the Customer shall pay invoice amounts on the terms set forth in this Agreement.

38.4 Upon agreement of the parties to enter into a change order, the parties will execute such a change order setting forth in reasonable detail the work to be performed thereunder, the revisions necessary to the specifications or performance schedules of any affected project work plan, and the estimated number of professional services hours that will be necessary to implement the work contemplated therein. The price of the work to be performed under any change order will be determined based upon the change order rate; however, the change order will be issued for a total fixed dollar amount and may not be exceeded regardless of the number of hours actually expended by the Contractor to complete the work required by that change order. The project work plan will be revised as necessary.

38.5 The Contractor will include in the progress reports delivered under this Agreement the status of work performed under all then current change orders.

38.6 In the event the Contractor and the State enter into a change order which increases or decreases the time required for the performance of any part of the work under this Agreement, the Contractor shall submit to the Customer a revised version of the project work plan, clearly indicating all changes, at least five (5) working days prior to implementing any such changes.

38.7 The Customer shall promptly review all revised project work plans submitted under this Agreement and shall notify the Contractor of its approval or disapproval, in whole or in part, of the proposed revisions, stating with particularity all grounds for any disapproval, within ten (10) working days of receiving the revisions from the Contractor. If the Customer fails to respond in such time period or any extension thereof, the Customer shall be deemed to have approved the revised project work plan.

ARTICLE 39 CONTRACTOR REVENUE & REMUNERATION

The following provisions shall apply to the recognition and disbursement of all funds received by Contractor, unless mutually agreed otherwise in writing by the parties hereto:

A. Contractor shall establish, with the approval of the State Treasurer, and maintain one or more Contractor Portal Bank Accounts and shall furnish the State with the names of the institutions, the account numbers and the names of those persons having signatory authority for the same.

B. The State shall establish and maintain, through the State Treasurer, one or more State Portal Revenue Accounts and shall furnish the Contractor with the names of the institutions and the account numbers.

C. Any fees to be charged for Portal Operations must be agreed to in specific SOWs. This includes any and all E-Government Transaction Fees, excluding Cost of Sales. The specific SOW will identify whether the fees collected shall be deposited in the State Portal Revenue Accounts or the Contractor Portal Bank Accounts.

D. Any Digital Government Consulting Fees, Subscription Services fees, and Agency Direct Fees will be invoiced electronically and deposited electronically into the Contractor Portal Bank Account per methods to be prescribed by DFA.

E. All fees for Instant Access Transactions shall be deposited directly into the State Portal Revenue Account per methods to be prescribed by DFA (SPI/ACH). All E-Government Fees for Instant Access Transactions, other than those associated with Existing Applications, will be wired daily by the State from the State Portal Revenue Account to Contractor's Portal Bank Account.

F. Contractor will provide online reports that detail and summarize the transactional activity of the State Portal Revenue Account and the Contractor Portal Bank Accounts. Such online reports shall be materially identical to Attachment 3 to Contractor's Proposal in response to the RFP, containing the glossary of reports. A complete reconciliation of the Contractor Portal Bank Accounts will be provided on a monthly basis by the last day of the month for the prior month's activity. In addition, Contractor shall provide daily reporting, as it pertains to the transactions under Contractor's control, which will allow the State to reconcile the State Portal Revenue Accounts.

G. Contractor shall transfer to the State Portal Revenue Account, on a monthly basis, all Regulatory Fees as defined in the SOWs for Subscription Services. These fees shall be electronically transferred (SPI/ACH) to the State Portal Revenue Account not later than the 25th day of the month.

H. Contractor shall transfer to the State Portal Revenue Accounts, on a monthly basis as a contract administration fee and State's net revenue share only, two percent (2%) of the Net Revenue for the prior month. These fees shall be electronically transferred (SPI/ACH) to the specified State Portal Revenue Accounts not later than the 25th day of the month. The parties agree that this contract administration fee shall increase during the Initial Term or any Renewal Term of this Agreement as follows: once annual Net Revenue reaches \$5,000,000.00, the amount transferred to the State will be three percent (3%) of Net Revenues. Thereafter, the amount transferred to the State will increase by one percent (1%) for each \$5,000,000.00 increase in annual Net Revenue, provided, however, that notwithstanding any of the foregoing, the total contract administration fee and State's net revenue share shall not exceed five percent (5%) of Net Revenue during the Initial Term or any Renewal Term of this Agreement.

I. Contractor will be entitled to retain any sums remaining after payment and transfer of the amounts in sections E through H above which will serve as its fee for Portal Operations.

J. A Flow of Funds diagram is attached hereto as Exhibit D.

ARTICLE 40 CONTINUITY OF SERVICES

40.1 Contractor recognizes that the services under this Agreement are very important to the residents and businesses of the State of Mississippi, and that the goal and intent of the parties is to continue such services without interruption and that, upon Agreement expiration, a successor, whether a governmental agency, the State or another private entity, may continue them.

40.2 Prior to the end of the Agreement Term (the "Transition Period"), Contractor covenants to make an orderly transition of the Portal and to perform any and all tasks in good faith that are necessary to preserve the integrity of on-going Portal operations. Contractor shall be entitled to receive its ordinary and usual compensation from the continued operation of the Portal during

such transition period; provided however, that if at the time of such transition the Portal is not generating sufficient funds for solvent operations, then Contractor shall be required to provide transition assistance and continued operations of the Portal during such Transition Period, at a mutually agreed upon fee schedule.

40.3 Contractor shall perform any Portal transition in a professional and businesslike manner, and will comply with the reasonable requests and requirements of the State, and any successor Portal services manager, to accomplish a successful, seamless, and unhindered transfer of responsibilities.

40.4 In the event of transition of Portal Operations from Contractor to another Authorized Portal Contractor, Contractor shall deliver such records as are necessary for Portal Operations to the new Authorized Portal Contractor. Any such transfer and disclosure will not, by itself, cause any such records that constitute Contractor Confidential Information to lose their protected status hereunder. In the event of any such transition, the Contractor Confidential Information shall not be disclosed or produced for any purpose, including a subpoena or other court or governmental order, without giving Contractor or its successors, assigns, parents, or subsidiaries advance written notice as set forth in ITS' public records policy, and an opportunity to object to the disclosure or production. Contractor shall be entitled to retain copies of the same.

ARTICLE 41 FORCE MAJEURE

Each party shall be excused from performance for any period and to the extent that it is prevented from performing any obligation or service, in whole or in part, as a result of causes beyond the reasonable control and without the fault or negligence of such party and/or its subcontractors. Such acts shall include, without limitation, acts of God, strikes, lockouts, riots, acts of war or terrorism, epidemics, governmental regulations superimposed after the fact, fire, earthquakes, floods, or other natural disasters, and interruption or failure of electricity, data and/or voice communication circuits and services (the "Force Majeure Events"). When such a cause arises, the Contractor shall notify the State immediately in writing of the cause of its inability to perform, how it affects its performance, and the anticipated duration of the inability to perform. Delays in delivery or in meeting completion dates due to Force Majeure Events shall automatically extend such dates for a period equal to the duration of the delay caused by such events, unless the Force Majeure Event lasts for sixty (60) calendar days, in which case the parties may mutually agree to terminate the Agreement.

ARTICLE 42 LIABILITY ISSUES

Unless jointly agreed otherwise in writing, Contractor's liability shall not exceed five (5) times the amount of the Net Revenue for the prior twelve (12) months of the Agreement. In no event will Contractor be liable to Customer for special, indirect, consequential or incidental damages including lost profits, lost savings or lost revenues of any kind unless Contractor was advised of the possibility of such loss or damage or unless such loss or damage could have been reasonably foreseen. Excluded from this or any liability limitation are claims related to fraud, bad faith,

infringement issues, bodily injury, death, physical damage to tangible personal property and real property, and the intentional and willful misconduct or gross negligent acts of Contractor. The language contained herein tending to limit the liability of the Contractor will apply to Customer to the extent it is permitted and not prohibited by the laws or constitution of Mississippi. Further, the parties understand and agree that the Contractor is precluded from relying on any contractual damages limitation language within this Agreement where the Contractor acts fraudulently or in bad faith.

ARTICLE 43 ADVERTISING

The Contractor must receive written approval from the State before advertising or referencing this Agreement or the services being provided. The Contractor must agree not to refer to this award in commercial advertising in such a manner as to state or imply that the Contractor or its services are endorsed or preferred by the State of Mississippi. Nothing herein will be interpreted as prohibiting Contractor from making disclosures to its parent company so that its parent company (or its parent's parent company, as the case may be) may make such public disclosures as are necessary in order to, in its counsel's reasonable opinion, comply with applicable laws, including securities laws.

ARTICLE 44 ESTABLISHMENT OF E-GOVERNMENT TRANSACTION FEES

In the event the Regulatory Fees are reduced or increased as a result of revisions to Mississippi law or regulation, or in the event taxes are imposed on transactions, such as any Internet sales or service tax, such reductions or increases, or such additional taxes, shall be passed on directly to Users as a decrease or increase in Total Fees without further action by the State.

For the faithful performance of the terms of this Agreement, the parties hereto have caused this Agreement to be executed by their undersigned authorized representatives.

**State of Mississippi, Department of
Information Technology Services**

Mississippi Interactive, LLC

By: _____
Authorized Signature

By: _____
Authorized Signature

Printed Name: David L. Litchliter

Printed Name: _____

Title: Executive Director

Title: _____

Date: _____

Date: _____

**Mississippi Department of Finance and
Administration**

By: _____
Authorized Signature

Printed Name: Cille Litchfield

Title: Deputy Executive Director

Date: _____

EXHIBIT A EXCEPTION SUMMARY

ITS RFP Reference	Vendor Proposal Reference	Brief Explanation of Exception	ITS Acceptance (sign here only if accepted)
(Reference specific outline point to which exception is taken)	(Page, section, items in Vendor's proposal where exception is explained)	(Short description of exception being made)	
1. Standard Contract (Exhibit A), Section 3.1.2, page 105	<p>Vendor has not provided a specific response to <i>Exhibit A, Standard Contract and Statement of Work</i>, outside of the <i>Proposal Exception Summary Form</i>.</p> <p>Vendor's has included a proposed approach to Project Evaluation, Selection and Prioritization in our response to <i>Section VII, Item 9.2.4</i>. The cornerstone of this approach is the need for clearly-written functional specifications for each approved service, which are agreed to in writing by ITS, the participating agency, and the Vendor. ITS and the participating agency will use the final agreed-upon Functional Specifications to determine whether the service meets the stated requirements and can be accepted.</p>	<p>No service goes live without ITS's (or the affected agency's) written approval. Because Vendor does not get paid if its deliverables/software do not work correctly, there is a built-in incentive for Vendor to correct any material deficiencies.</p> <p>Therefore, Vendor requests that Vendor's obligation to fix deliverables and other items, and ITS's right to reject the same, be limited to material non-conformance with the written functional specifications, thereby ensuring that Vendor is not penalized for minor non-conformances that do not affect the operation of the system. Vendor requests this concept be included throughout the Contract, SOW and RFP with respect to all items to be accepted by ITS (or any other State agency/subdivision).</p>	The State accepts this exception. See the revised Article 4.1.2 in the attached contract.
2. Form Contract (Exhibit A), Article 4, Sections 4.1, 4.2, 4.3, 4.4, 4.5, 4.6, 4.7, 4.8, 4.9, pp.	Vendor has not provided a specific response to <i>Exhibit A, Standard Contract and Statement of Work</i> , outside of the <i>Proposal Exception</i>	Vendor agrees that its services shall materially comply with the standards set forth in Section 4.1, as it should not be penalized for minor issues that	See the revised Article 5 in the attached contract for language the State accepts.

106-108	<p><i>Summary Form.</i></p> <p>Vendor provides a description of how the self-funded business model in which the Vendor is paid for services only when they are operating seamlessly, provides a strong incentive for the Vendor to ensure that all services are complying with written standards. Our specific approach for how we will provide similar services for <i>SOW 001: Payment Processor Solution</i>, are included in our response to <i>Section VII, Item 11.17</i>.</p>	<p>do not have a material impact. In addition, Vendor agrees that it shall re-perform the services that do not comply with the warranty, but because this is a long-term engagement and not turnkey delivery, it does not make sense to limit Vendor to re-perform the services for 90 days. In addition, Vendor wants to clarify that any fees paid back to a customer for unsatisfactory services are those fees paid to Vendor by the applicable State agency.</p> <p>With respect to Section 4.2, Vendor warrants that it has the right to license the Portal Software (which the State can receive a license to), but not all third party software may allow for re-licensing, and particularly with respect to items that the State procures but that Vendor is required to utilize in its performance of the Services, Vendor cannot make such a warranty. Based upon the guidance provided in the RFP and Amendment 3, we expect that the State will purchase most third party software. As such, this may not be an issue in the Mississippi E-Government Program.</p> <p>Vendor proposes changes to Sections 4.3 and 4.4 to be consistent with the revisions to Section 3.1.2 that address material nonconformance with the functional specifications. The functional specifications applicable to the products need to be mutually agreed by the parties in the applicable</p>	
---------	--	---	--

		<p>statement of work.</p> <p>Vendor requests Section 4.5 be revised since, as drafted, subsection (b) would allow the State to utilize the Vendor's software in violation of the terms of its use. Vendor suggests clarification that it not interfere with the State's lawful use of the software.</p> <p>With regard to Section 4.6, because once software/enhancements are delivered to Customer, there exist factors completely outside of Vendor's control that may cause exposure to a virus, the warranty must be limited to the time that Vendor delivers the item to the Customer. In addition, Vendor merely requests that this Section be revised to reflect that it may eradicate the virus, rather than having to go through the costly (and time consuming) process of providing different products, and that it shall be responsible for the reasonable costs of repairing the damage done by the virus, since the damage done may largely depend upon how well the Customer has followed industry standards in protecting itself (something Vendor has no control over).</p> <p>Vendor requests revision of Section 4.7 to make it consistent with Vendor's self-funded business model. All of the information related to the software remains with Vendor during the term of the Agreement, and upon receipt</p>	
--	--	---	--

		<p>of a license to the Portal Software, the State would also receive a license to the Contractor Materials and a copy of the same. The language in the original clause would require the Vendor to convey materials before the State had a license to use the same, and in addition, would require conveyance of some of Vendor's internal, proprietary information that it does not license to third parties, for security and other reasons.</p> <p>With respect to 4.8, if the State can provide the Vendor with a concrete definition of what "scandalous" material is, then Vendor may be able to agree to its inclusion in the clause. Unlike libel, which is concretely defined by applicable statute/case law, whether something is scandalous is often subjective, and as such, Vendor would be agreeing to comply with an undefined standard, or might reasonably believed it had complied only to have the State apply a different standard.</p> <p>With respect to Section 4.9, given that Vendor may be required by ITS to use third party software/products that it does not select, and that third party, off-the-shelf software may be used under a license for which Vendor will not be able to negotiate terms (i.e., a Microsoft product), Vendor can only warrant non-infringement with respect to those items that it, or its</p>	
--	--	--	--

		subcontractors, provide, and that are used in accordance with their terms of use. In addition, the warranty must be limited to United States proprietary rights, given the uncertainty of foreign law. Vendor also has clarified that the repayment under subsection (c), below, is applicable in the event the Vendor is not already proceeding under the other remedies proposed by ITS.	
3. Form Contract (Exhibit A), Article 9, page 111	<p>Vendor has not provided a specific response to <i>Exhibit A, Standard Contract and Statement of Work</i>, outside of the <i>Proposal Exception Summary Form</i>.</p> <p>The most relevant section addressing this concept is the description of the self-funded business model, which can be found in <i>Section VII, Items 5 and 16</i>.</p>	Regarding the Customer's right to terminate for failure of the legislature to appropriate funding, because this Agreement is to be largely self-funded, and because Vendor is making the capital investments and taking the financial risk, Vendor asks the State to recognize that this termination right is limited to those services that are actually paid for by the appropriated funding (vs. those paid from user fees).	See the revised Article 10 in the attached contract for language the State accepts.
4. Form Contract (Exhibit A), Section 10.1, pp. 111-112	<p>Vendor has not provided a specific response to <i>Exhibit A, Standard Contract and Statement of Work</i>, outside of the <i>Proposal Exception Summary Form</i>.</p> <p>For additional details about the proposed business model, please refer to our response to <i>Section VII, Items 5 and 16</i>.</p>	With respect to the first issue, Contractor is concerned that the clause, as drafted, would allow termination of the entire Agreement for a breach of a SOW. Given the time and effort invested by both parties in the Agreement, breach of a SOW should not result in termination of the entire Agreement, which would impact numerous other services and agencies whose agreements are not breached. Therefore, Vendor suggests that the termination provisions for SOWs (with the exception of SOW 001) be as agreed to by the parties in the template	See the revised Article 11 in the attached contract for language the State accepts.

		<p>SOW agreement to be drafted following execution of the Agreement. Vendor has proposed language at the end of Section 10.1 that sets forth this concept.</p> <p>Second, because Vendor is taking the upfront risk of investment under the proposed business model, Vendor asks that the State recognize that the State's right to terminate for convenience/without cause is not consistent with the self-funded model in order to give Vendor the agreed period of time to operate the Portal. Otherwise, Vendor, through no fault of its own, and despite its full performance of the Agreement, could be put in a position of losing its investment of time, money and resources, and not receiving the bargained-for period of time originally agreed by the State.</p> <p>Additionally, since Vendor is taking on all of the risk by making the upfront investments in the portal and not being paid by the State, Vendor proposes the inclusion of language that permits it to terminate if the revenues anticipated under the Agreement to reimburse its costs and expenses do not materialize after a reasonable period of time or is removed in the future. Vendor is unlikely to exercise this option except in the most extreme situations as it will lose any possibility to recover its sunk costs. (Note: Vendor has never to date</p>	
--	--	--	--

		<p>exercised this right, in its other state portal contracts.)</p> <p>Additional revisions are proposed to this section to correspond with Vendor's standard licensing provisions that it has utilized with other state partners, which provide a liberal license to Portal Software for the State if the Agreement is subject to "Termination by the State for Just Cause" as defined in Vendor's proposed revisions.</p> <p>Finally, Vendor proposes that each party have the opportunity to cure any breach prior to permitting the non-breaching party to terminate. Rather than insert the provision in each section where a termination right is noted, Vendor suggests the general addition included in the redline draft attached to Vendor's proposal. Vendor acknowledges that, in certain instances, only a ten (10) day cure period is applicable. Vendor's proposed revision makes clear that it does not take exception to the shorter cure periods.</p>	
5. Form Contract (Exhibit A), Article 12, page 112	Vendor has not provided a specific response to <i>Exhibit A, Standard Contract and Statement of Work</i> , outside of the <i>Proposal Exception Summary Form</i> .	Vendor requests that the waiver clause be revised to be mutual. A mutual waiver clause is standard in the vast majority of services contracts.	See the revised Article 13 in the attached contract for language the State accepts.
6. Form Contract (Exhibit A), Article 15, page 113	Vendor has not provided a specific response to <i>Exhibit A, Standard Contract and Statement of Work</i> , outside of the <i>Proposal Exception Summary Form</i> .	The indemnity provision, as drafted, is excessively broad and vague, and contains indemnification obligations that go well beyond what Vendor should reasonably be liable for in operating an	See the revised Article 16 in the attached contract for language the State accepts.

		enterprise-wide state portal as proposed. Vendor's infringement indemnification obligations are already as set forth in Section 4.9 of the Agreement. In addition, other sections in the Agreement clarify that Vendor is responsible for damages caused by defective products or services and non-compliance with the Agreement. Vendor agrees that it should be responsible for the previously mentioned issues, as well as issues caused by its, or its subcontractors', negligence or willful misconduct, and proposes revising the clause to reflect the same. Having all these obligations, the State is amply protected.	
7. Form Contract (Exhibit A), Article 19, page 114	Vendor has not provided a specific response to <i>Exhibit A, Standard Contract and Statement of Work</i> , outside of the <i>Proposal Exception Summary Form</i> .	While Vendor understands the State's need to assess Vendor's compliance with the Agreement, and to ensure that Vendor is accurately accounting for funds and transactions, Vendor proposes that the State's audit should be upon reasonable prior written notice to Vendor, at no out-of-pocket cost to Vendor, and that the audit should be of records that relate to the operation of the enterprise-wide Portal (as opposed to the internal, business records of Vendor that will not assist the State in determining Vendor's compliance with the Agreement). Vendor's other proposed changes to this section reflect that the arrangement will be primarily self-funded, (and therefore measuring the obligation to	See the revised Article 20 in the attached contract for language the State accepts.

		retain records from the date of final payment does not make sense) and to further clarify that items shared with the State during the audit will not lose their status as confidential items by virtue of the sharing.	
8. Form Contract (Exhibit A), Article 25, page 115	Vendor has not provided a specific response to <i>Exhibit A, Standard Contract and Statement of Work</i> , outside of the <i>Proposal Exception Summary Form</i> .	<p>Vendor's first proposed change in Article 25 is to reflect the possibility that one party may be required, by law, to share the other party's confidential information (subject to the process set forth herein).</p> <p>Vendor further proposes that changes to this Article are necessary to clarify that Vendor has other information that is confidential beyond what is contained in the exhibits (such as, for example, Vendor's proprietary software and related documentation), to set forth the confidentiality obligations surrounding the same (which have been accepted by Vendor's other state partners), and to clarify that ITS will assist Vendor in its efforts to protect its confidential information from public disclosure.</p>	See the revised Article 26 in the attached contract for language the State accepts.
9. Form Contract (Exhibit A), Article 27, page 115	<p>Vendor has not provided a specific response to <i>Exhibit A, Standard Contract and Statement of Work</i>, outside of the <i>Proposal Exception Summary Form</i>.</p> <p>We have provided a list of our existing inventory of existing E-Government applications that have been highly effective in other NIC states and would be available immediately to</p>	<p>Because Vendor's proposed business model is self-funded, Vendor proposes in this Article the use of ownership and licensing provisions that have been accepted by its other state partners in self-funded arrangements.</p> <p>The licensing model under which Vendor operates allows Vendor to bring intellectual property developed in one state to Mississippi, and</p>	See the revised Article 28 in the attached contract for language the State accepts.

	<p>Mississippi, provided we can negotiate equitable IP clauses, in our response to <i>Section VII, Item 9.3.2.1</i>. This potential list includes:</p> <ul style="list-style-type: none"> • Child Support Delinquency Casino Registry • Commercial Vehicle Driver Alcohol and Drug Testing • Court Filing System • Electronic Death Registration • Gambling Oversight Suite of Services • Inmate Banking Deposit System • Media Portal • Mobile Applications – iPad • Mobile Applications – Smartphones • One Stop Business Registration • Personal or Organizational Fitness Initiative Service • Public Meeting Notice System • Scholarship and Financial Aid System • Student Driver 	<p>reciprocally, allows intellectual property developed by Vendor in Mississippi to be provided to other states. This creates the ability of each state to tap into the expertise and improvements of 23 other development labs, rather than be limited to its own team’s development efforts. States must agree to this reciprocal sharing for Vendors work done in those states, in order to receive the work from other states. Vendor accomplishes this free exchange in the simplest manner possible, with ownership transfer/cross-licensing agreements between NICUSA and its state portal subsidiaries. The necessary license rights for a state to use the Portal Software without Vendor are granted upon the completion of the full Agreement term of the Agreement (including any renewal terms), or upon the termination of the Agreement as a result of material uncured breach by Vendor, or Vendor’s bankruptcy/insolvency. In effect, the State “pays” for the royalty-free, perpetual software license with rights to modify the software, through the opportunity for Vendor to earn transaction fees that are paid to Vendor over the course of the Agreement, with the result that the State will receive all necessary rights to continue the use of the Portal Software upon the termination of the contract, without any licensing fee. The State will receive all the rights required to use, display, and modify the</p>	
--	---	--	--

	<p>System</p> <ul style="list-style-type: none"> • Temporary Tag Vehicle Registration System 	<p>Portal Software, without having ownership transferred to it, through receipt of the license proposed in Vendor's redlines to Section 27, as contained in <i>Attachment 13: Proposed Redlines of Legal Exceptions</i>. Additionally, the licensing provisions recognize the SaaS services that Vendor now offers (the NIC Electronic Services as defined in <i>Attachment 13</i>). These SaaS services are proprietary software services that are widely commercially available and may be obtained from a variety of third party service providers. NIC and certain of its affiliates ("NIC," herein) have elected to make these services available to all of NICUSA's portal subsidiaries for reasons of efficiency, effectiveness and security. SaaS services typically involve large, very complex systems that are subject to exacting standards and high security requirements. By having one SaaS service across the many portals, NIC is able to provide one update across the board (when an update is necessary), instead of performing an update for each portal. Similarly, contracting certain services such as payment processing relieves an individual portal subsidiary of the heavy security burden it would otherwise bear, and allows it to share that burden with its affiliates through SaaS services. While these SaaS services are not included in the Portal Software license granted upon Termination by</p>	
--	---	--	--

		<p>the State For Just Cause, or upon natural expiration of the full Agreement term, because these services are commercially provided, the State may contract with Vendor or another third party following termination of the Agreement, if it desires to continue to receive these particular services.</p> <p>Even if we desired to do so, we cannot, as a matter of trust with our state partners, share IP from other state portals with Mississippi under more favorable licensing terms than those the other states have agreed to. Our alternative is not to share at all, which we believe would be detrimental to Mississippi and make our success here more costly and time consuming than it needs to be.</p> <p>The Article additionally clarifies that, to the extent third party software is utilized under the Agreement and is transferable, Vendor will assign the licenses. As previously stated, with respect to services such as the payment processing application, which is provided as a service to a number of different state portals and owned and hosted by Vendor's parent company, the State can contract with NIC for use of such services following termination of the Agreement.</p>	
10. Form Contract (Exhibit A), Article 28, pp. 115-116	Vendor has not provided a specific response to <i>Exhibit A, Standard Contract and Statement of Work</i> , outside	Vendor is agreeable to the non-solicitation clause contained in the Agreement, but because Vendor's	See the revised Article 29 in the attached contract for language the State accepts.

	<p>of the <i>Proposal Exception Summary Form</i>.</p> <p>Vendor's staffing approach is included in our response to <i>Section VII, Item 15.6</i>.</p>	<p>personnel are an invaluable part of its business operations, Vendor requests that the non-recruitment obligation in this Agreement be mutual. Furthermore, as Vendor sometimes seeks input from experts employed by its parent company, Vendor asks that this prohibition extend to those employees as well.</p>	
11. Form Contract (Exhibit A), Article 31, page 116	<p>Vendor has not provided a specific response to <i>Exhibit A, Standard Contract and Statement of Work</i>, outside of the <i>Proposal Exception Summary Form</i>.</p>	<p>Vendor requests that certain of the additions it is proposing to this Agreement be included in the survival clause, and that the clauses that should survive termination are expressly called out to avoid uncertainty. In addition, Vendor request that only certain parts of Article 4 should survive termination, as only some of the warranties and obligations contained in Article 4 have implications beyond termination.</p>	<p>The State does not accept this exception.</p>
12. Contract (Exhibit A), Article 36, pp. 117-118	<p>Vendor has not provided a specific response to <i>Exhibit A, Standard Contract and Statement of Work</i>, outside of the <i>Proposal Exception Summary Form</i>.</p> <p>Vendor's staffing approach is included in our response to <i>Section VII, Item 15.6</i>.</p>	<p>While Vendor understands the State's desire to maintain continuity in the staffing under the Agreement, because Vendor is responsible and therefore liable for their performance, Vendor needs the ability to remove personnel for disciplinary and other reasons, or if it believes it is in the best interests for the performance of the Agreement.</p> <p>Vendor views this Agreement as an opportunity for a long and successful relationship. Our longest state partner relationship is 18 years. So, Vendor has a reputation to uphold that is the State's best guarantee against any</p>	<p>The State has removed the Personnel Assignment Guarantee Article from the attached contract. We will address this on the SOW level.</p>

		<p>personnel “bait and switch.” However, for the State to have access to the best candidates, Vendor must be able to offer the candidates promotional opportunities within the organization. To do otherwise is to risk Mississippi’s loss of the best and brightest NIC talent, who would view the State as a “dead end” or “retirement” assignment and would have no choice but to quit if the State did not agree to their transfer. Vendor has proposed language at the end of the clause that will permit reassignment for that reason.</p> <p>Furthermore, given the investment that Vendor makes in its employees, Vendor requests that, prior to the State requiring Vendor to remove an employee, the parties mutually agree to a corrective action plan and then, if the employee does not successfully follow the plan, the Vendor shall remove the employee.</p> <p>Given the need for internal promotion, as well as discipline, of the employee, Vendor requests these revisions, along with its contractual pledge that it will replace such personnel with employees with qualifications that are as good or better.</p> <p>In addition, Vendor requests deletion of the right of the State to terminate if an employee resigns or is otherwise removed in accordance with the proposed revisions, as well as deletion</p>	
--	--	--	--

		of the liquidated damage penalty. Given that Vendor remains responsible for performance of the Agreement, there is built-in incentive for Vendor to ensure that employees are correctly performing their duties and that replacements are in place in a timely manner and capable of performing their responsibilities.	
13. Contract (Exhibit A), Article 39, page 119	<p>Vendor has not provided a specific response to <i>Exhibit A, Standard Contract and Statement of Work</i>, outside of the <i>Proposal Exception Summary Form</i>.</p> <p>For details about NIC's approach to payment processing, please refer to our response to <i>Section VII, Item 11</i>.</p>	The RFP clearly requires a payment processing solution that is hosted (i.e., a SaaS solution); however, this clause requires escrow of the payment processing software. In a SaaS arrangement, because licenses to copies of the software are not granted, the source code for the same is not subject to escrow. Vendor, in its redlines to Article 27 of the Agreement, is proposing that the State receive a license to its Portal (non-SaaS) Software, and accordingly has revised the Article to require escrow of the Portal Software for the State's benefit. Vendor has an enterprise-wide agreement with a nationally recognized escrow agent and looks forward to discussing with the State the advantages of utilizing this particular escrow company.	See the revised Article 37 in the attached contract for language the State accepts.
14. Form SOW (Exhibit A), Section 1, pp. 122-123	<p>Vendor has not provided a specific response to <i>Exhibit A, Standard Contract and Statement of Work</i>, outside of the <i>Proposal Exception Summary Form</i>.</p> <p>For details about NIC's approach to payment processing, please refer to</p>	Vendor requests revisions to certain of the definitions, as well as addition to the definitions, contained in the SOW so that the same correspond with definitions applicable to Vendor's business model. It appears that the definitions in the SOW may be better suited to an	See the revised Article 1 in the SOW for language the State accepts.

	<p>our response to <i>Section VII, Item 11</i>.</p> <p>For details about NIC's approach to security and protecting personally-identifiable information, please refer to our response to <i>Section VII, Item 6.3.3</i>.</p>	<p>engagement where the vendor delivers a turnkey payment processing product to the State, who then operates the system directly. Under Vendor's business model, Vendor operates the payment processing service itself and is not providing a product or system to the State for its sole operation. In connection with the same, Vendor requests that all instances of "Software" in the SOW be replaced with "Payment Processing Services."</p> <p>Vendor's addition of Transaction Data and Transaction Documentation is made in connection with Vendor's obligation to ensure that personally identifiable information is protected as required by the Payment Card Industry Data Security Standards (PCI DSS) and any applicable State law. The Payment Processing Services include use of details related to End Users (which are confidential) and which, by virtue of State and Federal law and industry requirements, must be handled and retained in accordance with specific and rigorous standards. Vendor cannot legally turn over records that include such information over to the State, unless the State is in compliance with applicable State and Federal laws, and all applicable industry standards. Otherwise, the information must remain with Vendor, until such time as the State is qualified to accept it. The State</p>	
--	---	---	--

		has the right to audit the Vendor's handling of information to verify Vendor's compliance with the requirements of the Agreement.	
15. Form SOW (Exhibit A), Section 4(c), page 126	<p>Vendor has not provided a specific response to <i>Exhibit A, Standard Contract and Statement of Work</i>, outside of the <i>Proposal Exception Summary Form</i>.</p> <p>For details about NIC's approach to payment processing, please refer to our response to <i>Section VII, Item 11</i>.</p>	Since Vendor does not grant software licenses to the NIC Electronic Services, which are SaaS services, Vendor proposes that the requirement in this section relating to transition of the site upon termination or expiration of the Agreement or SOW 001 be deleted as not applicable.	The State accepts this exception.
16. Form SOW (Exhibit A), Section 5(a), page 126	<p>Vendor has not provided a specific response to <i>Exhibit A, Standard Contract and Statement of Work</i>, outside of the <i>Proposal Exception Summary Form</i>.</p> <p>For details about NIC's approach to payment processing, please refer to our response to <i>Section VII, Item 11</i>.</p>	Vendor requests clarification that the Customer will have a use license to access the Payment Processing Service (and not a license to a copy of the actual software itself). In addition, Vendor seeks to clarify that Customer's use of the Payment Processing Service will be subject to Vendor's standard terms and conditions of use, as contained in the SOW, the Agreement and RFP. Furthermore, Vendor proposes to carry the exclusions from the uptime requirements into this Section, such as emergency maintenance, Force Majeure Events, and other events outside of Vendor's control, because in these unique instances (in addition to regularly scheduled maintenance and required repairs), Vendor is prevented from granting access to the Payment Processing Service due to events beyond its control.	See the revised Article in the SOW for language the State accepts.

17. Form SOW (Exhibit A), Section 5(d), page 127	<p>Vendor has not provided a specific response to <i>Exhibit A, Standard Contract and Statement of Work</i>, outside of the <i>Proposal Exception Summary Form</i>.</p> <p>For details about NIC's approach to payment processing, please refer to our response to <i>Section VII, Item 11</i>.</p>	<p>Vendor proposes that the availability of the Payment Processing Service is the service level that should be measured, and desires to carry the exceptions from the uptime measurement through to this subsection (d).</p> <p>In addition, Vendor requests that the liquidated damages provision be deleted and replaced with a corrective action plan. Given that DFA does not pay Vendor under Vendor's proposed self-funded model, if the Payment Processing Service is unavailable, Vendor is already being financially penalized because it is not being paid. Accordingly, built-in incentive already exists for Vendor to promptly and fully remedy any uptime issues.</p>	See the revised Article in the SOW for language the State accepts.
18. Form SOW (Exhibit A), Section 5(f), page 127	<p>Vendor has not provided a specific response to <i>Exhibit A, Standard Contract and Statement of Work</i>, outside of the <i>Proposal Exception Summary Form</i>.</p> <p>For additional details about NIC's approach to payment processing, please refer to our response to <i>Section VII, Item 11</i>.</p>	Vendor requests the acknowledgment that an additional agreement will be required between each State agency requesting payment processing services and the Vendor because the State agency will be the one actually receiving the payment processing services, as opposed to ITS who is overseeing the payment processing services under SOW 001.	The State does not accept this exception.
19. Form SOW (Exhibit A), Section 6(c), page 128	Vendor has not provided a specific response to <i>Exhibit A, Standard Contract and Statement of Work</i> , outside of the <i>Proposal Exception Summary Form</i> .	Vendor proposes that with respect to acceptance testing, this Section be revised to include "functional specifications" in accordance with its previous comments.	See the revised Article in the SOW for language the State accepts.
20. RFP, Section III, Item 13.5, page	Per the Proposal Submission Requirements	While Vendor understands the State's desire to maintain	The State accepts this exception.

12	<p>outlined in the RFP, Vendor has not provided a specific response to <i>RFP Section III</i>, outside of the <i>Proposal Exception Summary Form</i>.</p> <p>For additional details about NIC's approach to staffing, please refer to our response to <i>Section VII, Item 15.6</i>.</p>	<p>continuity in the staffing under the Agreement, because Vendor is responsible and therefore liable for their performance, Vendor needs the ability to remove personnel for disciplinary and other reasons, or if it believes it is in the best interests for the performance of the Agreement. As such, Vendor requests a limited revision to this Item to note that exceptions to the requirement regarding Vendor personnel assigned to a project may appear elsewhere in the governing Agreement.</p>	
21. RFP, Section III, Item 16, page 13	<p>Per the Proposal Submission Requirements outlined in the RFP, Vendor has not provided a specific response to RFP Section III, outside of the <i>Proposal Exception Summary Form</i>.</p>	<p>Vendor generally agrees with the restriction on advertising, as set out in this Item, and requests a limited revision that acknowledges its obligation to make disclosures to its parent company, in order for the parent company to make public disclosures its counsel reasonably believes are required by applicable law, such as public company disclosures.</p>	<p>The State accepts this exception.</p>
22. RFP, Section III, Item 17, page 13	<p>Per the Proposal Submission Requirements outlined in the RFP, Vendor has not provided a specific response to RFP Section III, outside of the <i>Proposal Exception Summary Form</i>.</p>	<p>In the instance where the State requires the Vendor to use third party products from other existing IT contracts, the Vendor proposes that it should not be responsible for any issues with, or that result from, such products, since Vendor will have not been involved in the selection, testing or validation of the same and the third party vendor owes its contractual obligations to the State, not the Vendor.</p>	<p>This Item is not applicable to this Agreement.</p>
23. RFP, Section IV, Item 11, page 17	<p>Per the Proposal Submission Requirements outlined in the RFP, Vendor</p>	<p>Vendor requests revisions to this section to clarify that it is only applicable to time and</p>	<p>The State does not accept this exception.</p>

	has not provided a specific response to RFP Section IV, outside of the <i>Proposal Exception Summary Form</i> .	materials projects, for the reasons previously described.	
24. RFP, Section IV, Item 16.2, page 18	Per the Proposal Submission Requirements outlined in the RFP, Vendor has not provided a specific response to RFP Section IV, outside of the <i>Proposal Exception Summary Form</i> .	Vendor is generally agreeable to this Section with the very limited exception that the obligation to convey such items shall only exist to the extent that the items are transferable to the State without cost to Vendor.	The State accepts this exception.
25. RFP, Section IV, Item 28.1, page 20	<p>Per the Proposal Submission Requirements outlined in the RFP, Vendor has not provided a specific response to RFP Section IV, outside of the <i>Proposal Exception Summary Form</i>.</p> <p>We have provided a list of our existing inventory of existing E-Government application that have been highly effective in other NIC states and would be available immediately to Mississippi, provided we can negotiate equitable IP clauses, in our response to <i>Section VII, Item 9.3.2.1</i>.</p>	<p>Vendor can comply, if necessary, with this provision. However, we feel that the proposed language will prevent the State from having the benefits of access to online services and developments that have been effective in the other NIC-affiliated portals. NIC proposes that the better approach for consideration is for the State to agree to the licensing model NIC uses in its other portals; that is, NIC retains ownership of the work, developments and ideas it generates, and the State receives a license to use such in the portal, which license permits the State to use, copy and modify such materials. This provision is not intended to prevent the State's use of the materials in the portal operations. However, as NIC retains ownership, it is able to make such developments and ideas available to other portals as appropriate, and likewise, the State will enjoy the developments and ideas developed in the other affiliated portals.</p> <p>As such, Vendor requests revisions to this section to</p>	The State does not accept this exception. See Article 28 in the attached contract for language the State accepts.

		<p>make it consistent with Vendor's self-funded business model. As further described in the changes proposed by Vendor to Article 27 of the Standard Contract, the perpetual, royalty-free license proposed by the Vendor will give the State all of the rights it needs to use, display and modify the Portal Software to run the Portal.</p> <p>In addition, pursuant to the guidance of MS Atty Gen. Opns. issued by the State as part of Amendment 3, RFP Questions and Clarifications Memorandum, ownership and licensing terms are a matter of contractual negotiation between a vendor and the State. This interpretation has been confirmed by our local counsel, Butler & Snow, LLP, of Jackson, Mississippi. Accordingly, we are pleased to offer the licensing terms included in Section 27 of the Agreement.</p>	
26. RFP, Section IV, Item 29, page 21	Per the Proposal Submission Requirements outlined in the RFP, Vendor has not provided a specific response to RFP Section IV, outside of the <i>Proposal Exception Summary Form</i> .	Vendor proposes revisions to this Item to reflect Vendor's self-funded business model. To the extent custom tailored software is included in the definition of Portal Software, then a license to the custom tailored software is included in the Vendor's Portal Software license grant to the State. The license will give the State all of the rights it needs to use, deploy and modify the enterprise-wide Portal Software to run and modify the Portal.	See the attached contract for language the State accepts.
27. RFP, Section IV, Item 31, page	Per the Proposal Submission Requirements	Vendor requests revisions to this Section for the reasons	The State does not accept this exception.

21	outlined in the RFP, Vendor has not provided a specific response to RFP Section IV, outside of the <i>Proposal Exception Summary Form</i> .	previously set forth in this exception form regarding the licensing of Third Party Software. Because Vendor will be the entity utilizing the Third Party Software to run the Portal on behalf of the State, most third party license terms typically require that the license be in Vendor's name. If the State plans to purchase the third party software, as contemplated in the RFP and Amendment 3, then this requirement will not be an issue for State-purchased software.	See the attached contract for language the State accepts.
28. RFP, Section VII, Item 9.3.2.7 and 9.3.2.7.1 pp. 54	Vendor's response to Section VII, Item 9.3.2.7 and 9.3.2.7.1 (pages 283 – 285).	The provisions, as drafted, require that the State receive a perpetual license to any Vendor software developed or implemented for the State during the term of the Agreement, without regard for whether the Agreement was allowed to run the full term, or terminated for any other reason. This may be appropriate if this were a payment-for-development contract, but NIC is proposing a self-funded model. Under the Vendor's proposed self-funded business model, Vendor deploys the Portal Software (and other software) during the term of the Agreement without the payment of any upfront license fee by the State. The necessary perpetual, royalty-free license rights to continue such use and to be allowed to modify the Portal Software are granted upon the natural expiration of the Agreement, or upon the termination of the Agreement as a result of "Termination by	The State does not accept this exception. See the attached contract for language the State accepts.

		<p>the State for Just Cause.” If the Agreement is terminated for any other reason, then the State can secure the right to use and modify the Portal Software by paying a license fee, which amount is agreed to at the time of termination.</p> <p>In effect, under the Vendor’s self-funded business model, the State pays for the royalty-free, perpetual software license through the opportunity for Vendor to earn the transaction fees that are paid to the Vendor over the course of the Agreement. As a result, the State will receive all necessary rights to continue the use of the Portal Software upon the termination of the Agreement, without any upfront payment of licensing fees, and without any licensing fee.</p> <p>Additionally, to the extent the State desires to use the Vendor’s Payment Processing Service, as defined in Vendor’s proposed revisions to SOW 001, it may do so during this Agreement without additional charge, but the perpetual license grant described above does not apply to these software services, and a separate agreement for these services would be required for continued use following termination of the Agreement.</p>	
29. RFP, Section VII, Item 11.9.5, page 64	Vendor’s response to Section VII, Item 11.9.5 (pages 346 – 347).	With respect to Vendor’s liability for any financial loss incurred by the State resulting from the payment system’s failure to timely and accurately transfer funds, Vendor	The State does not accept this exception. See SOW 001 for language the State accepts.

		<p>requests clarification that it will not be responsible for losses caused by Force Majeure events, or subcontractors who perform their obligations in accordance with industry standards. To the extent a loss is caused by an event completely outside of Vendor's control, or to the extent a subcontractor is acting according to the parties' reasonable expectations in conforming with industry standards, Vendor should not be held liable.</p> <p>Furthermore, as reconciliation issues may arise that do not materially impact settlement, Vendor requests deletion of the reconciliation language.</p> <p>Finally, Vendor requests replacement of the liquidated damages clause with a corrective action plan. As previously discussed, if the Payment Processing Service is not correctly functioning, then Vendor is not receiving payment and risks damage to its national reputation. Therefore, Vendor is already incentivized to fully and promptly correct deficiencies in the Payment Processing Service. A corrective action plan requires the Vendor to address the payment system's failure under Section VII, Item 11.9.5, and detail how and when the problem will be remedied.</p>	
30. RFP, Section VII, Item 11.15.9, pp. 75-76	Vendor's response to Section VII, Item 11.15.9 (page 414).	As previously noted, liquidated damages are unnecessary, because with Vendor's self-funded model, if	The State does not accept this exception. See the attached contract for language

		<p>there are material issues with system availability, Vendor will not be receiving payment. The lack of payment, along with the real potential for damage to Vendor's reputation among all of its state partners and potential partners, is sufficient incentive to ensure that system availability issues are prevented or promptly resolved.</p> <p>Vendor proposes elimination of the liquidated damages in this Item for the same reasons stated in its explanation to Section VII, Item 11.9.5, above.</p>	the State accepts.
31. RFP, Section VII, Item 11.17, pp. 78-81	<p>Vendor's response to Section VII, Item 11.17 (pages 422 - 434).</p> <p>Our specific approach for how we will provide similar services, and in some cases exceed the requested warranty provisions for <i>SOW 001: Payment Processor Solution</i>, are included in our response to <i>Section VII, Item 11.17</i>.</p>	Because the payment processing is offered as a SaaS, Vendor's believes that the warranties included in Section VII, Item 11.17 and its subsections are not applicable, and Vendor requests clarification of the same as noted.	See the attached contract for language the State accepts.
32. RFP, Section VII, Item 12.1.5, pp. 81-82	Vendor's response to <i>Section VII, Item 12.1.5</i> (pages 456 – 457).	Vendor is agreeable to the requirement that the State approve all key staff members prior to the beginning of the term of the Agreement; however, Vendor requests clarification that the approval will not be unreasonably withheld, and will not apply to non-key staff members.	The State agrees in concept with this exception but will defer to each applicable SOW.
<p>Proposed Contractual Clauses</p> <p>(Detailed clauses contained in Attachment 13)</p>		Vendor requests that the items entitled below as "Vendor's Proposed Contractual Clauses" be included in the Agreement. Vendor has found the terms to be extremely helpful in	

		administering a successful self-funded contract for enterprise-wide e-government services in its other 23 engagements with state partners.	
33. Flow of Funds	<p>These are additional proposed clauses not addressed in the RFP or Exhibit A Standard Contract and Statement of Work. As such, there is not a specific reference to Vendor's response.</p> <p>In this particular case, NIC has proposed a flow of funds that has been effective in other states in our response to <i>Section VII, Item 11.8.8</i>.</p>	Given Vendor's unique self-funded business model, it is critical that the flow of funds and payment be expressly set forth as a new Article 41 in the Agreement.	See Article 39 in the attached contract for language the State accepts.
34. Transition	These are additional proposed clauses not addressed in the RFP or Exhibit A Standard Contract and Statement of Work. As such, there is not a specific reference to Vendor's response.	Vendor has found that an agreement by the parties on transitioning the project upon termination is extremely helpful, and suggests the following clause be added as Article 42 to the Agreement.	See Article 40 in the attached contract for language the State accepts.
35. Force Majeure	These are additional proposed clauses not addressed in the RFP or Exhibit A Standard Contract and Statement of Work. As such, there is not a specific reference to Vendor's response.	Given the multitude of items that can, without the fault of either party, affect the provision of electronic services under the Agreement and the SOW, Vendor requests the addition of a force majeure clause as a new Article 43 of the Agreement. Vendor is a contracted service provider and not an insurance underwriter.	See Article 41 in the attached contract for language the State accepts.
36. Negligence or Misconduct of the State, ITS or Any Agency	These are additional proposed clauses not addressed in the RFP or Exhibit A Standard Contract and Statement of Work. As such, there is not	Given the extent of Vendor's obligations under the Agreement, Vendor wishes to clarify that it is not responsible for the negligence or misconduct of the State, its	See Article 16 in the attached contract for language the State accepts.

	a specific reference to Vendor's response.	subdivisions, and the employees and agents of the same. Therefore, Vendor requests the addition to the Agreement of a new Article 44 to clarify the same.	
37. Limited Disclaimer of Warranties	These are additional proposed clauses not addressed in the RFP or Exhibit A Standard Contract and Statement of Work. As such, there is not a specific reference to Vendor's response.	Vendor understands that it cannot disclaim certain implied warranties under Mississippi law. In order to ensure that the agreement of the parties is, to the fullest extent possible, expressly set forth in the Agreement, Vendor requests the addition of a new Article 45 to the Agreement which disclaims all warranties, except to the extent not allowed by Mississippi law.	The State does not accept this exception.
38. Establishment of E-Government Transaction Fees	These are additional proposed clauses not addressed in the RFP or Exhibit A Standard Contract and Statement of Work. As such, there is not a specific reference to Vendor's response. For additional information about the approval of E-Government Transaction Fees, please refer to our response to <i>Section VII, Item 5.3.6</i> .	In the past, it has been helpful to include in our agreements with Vendor's other state partners how the fees to be charged to Users under the Agreement will be approved by the State. Vendor requests the establishment of a new Article 46 to the Agreement that includes the clause it utilizes with several of its other government partners which sets forth the framework for approving these fees.	The State does not accept this exception.
39. Limited Limitation of Liability	These are additional proposed clauses not addressed in the RFP or Exhibit A Standard Contract and Statement of Work. As such, there is not a specific reference to Vendor's response.	Vendor understands that its liability will not be limited in the instances set forth in Section IV, Item 7.3. However, Vendor merely requests that, for all other instances, it not be liable for indirect, special, consequential or punitive damages. Since the Vendor is required to self-fund all upfront and ongoing operations, adding recovery of	See Article 42 in the attached contract for language the State accepts.

		consequential, special, punitive and indirect damages puts Vendor at considerable additional risk. Therefore, Vendor requests the addition of a new Article 47 to the Agreement to clarify the same.	
40. Insufficient Funds	These are additional proposed clauses not addressed in the RFP or Exhibit A Standard Contract and Statement of Work. As such, there is not a specific reference to Vendor's response.	Vendor requests the addition of a new Section 10 to SOW 001 clarifying that it is not guaranteeing payment to the State for, nor collection by the State of, transactions that are later determined to be subject to insufficient funds, dishonor, chargeback or any other failure of payment. In such an instance, Vendor will not receive its transaction fee, and the State will not receive its statutory or other fee. Therefore, no payment has been made, and so, it is not reasonable to expect the Vendor to guarantee payment. Vendor does agree to properly account for all fees received, and to pay to the State the appropriate amount of fees collected.	The State accepts this exception.

EXHIBIT B
Statement of Work Template

PROJECT NUMBER [REDACTED]
REQUEST FOR PROPOSAL # 3564
STATEMENT OF WORK NO. [REDACTED]
BETWEEN
MISSISSIPPI INTERACTIVE, LLC
AND
MISSISSIPPI DEPARTMENT OF INFORMATION TECHNOLOGY SERVICES
AS CONTRACTING AGENT FOR
[INSERT CUSTOMER AGENCY NAME]

This Statement of Work (hereinafter referred to as “SOW”) is issued pursuant to the Professional Services Agreement (“Agreement”) executed [INSERT EXECUTION DATE] between Mississippi Interactive, LLC (“Contractor”) and the Mississippi Department of Information Technology Services (“ITS”) as contracting agent for the Mississippi Department of Finance and Administration (“DFA”). Pursuant to said Agreement, this SOW is made by and between Contractor, ITS and [INSERT CUSTOMER AGENCY NAME] (hereinafter referred to as “Customer”). ITS and Customer are sometimes collectively referred to herein as “State”. Unless otherwise indicated herein, capitalized terms used in this SOW without definition shall have the respective meanings specified in the Agreement and all section, schedule and attachment references in this SOW shall be to applicable sections, schedules and attachments of the Agreement.

This SOW shall be governed by and expressly incorporates the terms and conditions of the Agreement to the extent applicable. The parties, pursuant to the terms of the Agreement, hereby set forth the scope of work, cost, and other provisions under which Customer engages Contractor to provide the services specified herein.

1. Definitions: [Insert any definitions that the parties deem are needed.]
2. Term: This SOW shall begin on the date it is signed by all parties (hereinafter referred to as “Effective Date”), and shall continue in effect until the close of business on [INSERT DATE], unless this SOW is extended by mutual written agreement of the parties, or terminated as prescribed elsewhere herein. Notwithstanding the foregoing, this SOW shall not survive the termination or expiration of the Agreement. Termination of this SOW shall not operate to terminate any other SOW between the parties, and such termination shall not, by itself, operate to terminate the Agreement.
3. Scope of Work To Be Performed: [Insert summary description of Professional Services to be performed, any required level of performance, length of time (assuming obligations of

Customer are timely met), identified milestones for performance stages, and the required specifications for each deliverable or the manner in which those specifications are to be developed. Identify any applicable Contractor products or third party software to be delivered.]

4. Deliverables: The following are the deliverables to be provided by Contractor to Customer under this SOW: [Insert list of deliverables]

5. Acceptance Criteria: [Insert language addressing the length of the Customer's acceptance period after performance of the services or delivery of the products, as well as language specifying how long Contractor has to repair, replace or remedy the services or products that do not materially comply with the applicable functional specifications, and any other acceptance testing terms.]

After acceptance and prior to launch of the service, Contractor will provide the Customer, ITS, and if the project involves the payment of fees, DFA, with an Acceptance Letter describing that the service has been built to the Customer's requirements. The Customer, ITS, and if applicable DFA are required to execute the letter as a condition to Contractor moving the service into production.

6. Compensation: [Insert whether this is a Fee for Service Project (Original or Modified) or a self-funded project, and the fees associated with the services/deliverables to be provided by Contractor (whether the same are E-Government Transaction Fees, Regulatory Fees, Agency Direct Fees or Digital Government Consulting Fees, and into which bank account (State-owned Portal Revenue Account, or Contractor's Portal Bank Account) the fees will be deposited. If an Original Fee for Service Project, consider whether there should be any licensing back to Contractor, and the fees and terms and conditions upon which the same should occur.] The payment terms shall be as specified in Article 4 of the Agreement.

7. Personnel Assignment Guarantee:

7.1 The Project Manager assigned by Contractor to this SOW is: [Insert Name].

7.2 Contractor guarantees it will use its best efforts to ensure that the project manager assigned to this project will remain a part of the project through the first production application deployment as long as the project manager is employed by the Contractor and is not replaced by Contractor pursuant to the third paragraph of the Article titled "Employment Status" in the Agreement. Contractor further agrees that the project manager will function in the capacity for which their services were acquired through the user acceptance of the first production application deployment under this SOW, and any failure by Contractor to so provide this person shall entitle the State to terminate this SOW and/or the Agreement for cause. Contractor agrees to pay the Customer twenty-five percent (25%) of the Net Revenue for the first twelve (12) months of the application/project authorized herein if the project manager is removed from the project prior to the successful deployment of the application/project authorized herein for reasons other than

departure from Contractor's employment or replacement by Contractor pursuant to the third paragraph of the Article titled "Employment Status" in the Agreement. Subject to the State's written approval, the Contractor may substitute qualified persons in the event of the separation of the project manager therein from employment with Contractor or for other compelling reasons that are acceptable to the State, and in such event, will be expected to use its best efforts to have the substitute personnel in place within thirty (30) calendar days of the employee's departure from the assigned role, or within such other mutually agreed upon period of time, or the Customer may, in its sole discretion, terminate this SOW and/or Agreement immediately without the necessity of providing thirty (30) days notice. The replacement personnel shall have equal or greater ability, experience and qualifications than the departing personnel, and shall be subject to the prior written approval of the Customer, such approval not to be unreasonably withheld. The Contractor shall not permanently divert any staff member from meeting work schedules developed and approved under this SOW unless approved in writing by the Customer. In the event of Contractor personnel loss or redirection, the services performed by the Contractor shall be uninterrupted and the Contractor shall report in required status reports its efforts and progress in finding replacements and the effect of the absence of those personnel.

7.3 Notwithstanding anything contained in this SOW, the Agreement or RFP No. 3564 to the contrary, Contractor may reassign employees, without penalty, in the event that (a) Contractor believes in good faith that such a reassignment is favorable to the Customer, or (b) such reassignment is a result of disciplinary action toward the employee being removed, or (c) such reassignment is necessary in order for the Contractor to comply with the Family Medical Leave Act. In addition, nothing in this Article shall be construed to impose liability upon Contractor in the event an employee terminates its employment relationship with Contractor.

8. Responsibilities of Contractor: [Depending on the services/products/deliverables to be provided, you will need to adjust these (add to or take away from) responsibilities shown below on a case by case basis.] Contractor shall have the following responsibilities:

- (a) Provide technical support to Users of the Portal. Such support shall be directed to answering User questions and resolving User problems related to screen and record formats, codes, abbreviations, billing policies, error messages, batch run problems and other concerns related to accessing public records or conducting transactions through the Portal.
- (b) Provide and obtain the approval from Customer on all Customer screen display designs, internal and external design documents, requirement documents and application requirements prior to implementation and availability to Users and Monthly Account Holders.
- (c) Take reasonable precautions to protect against unauthorized access or release of public records, confidential records or confidential information in the custody of Contractor or Customer, as set forth in the Agreement.
- (d) Provide for payment of Regulatory Fees collected in accordance with the terms of the Agreement.
- (e) Cooperate with Customer in facilitating transactions through the web Portal as provided by the mutual agreement of Customer and Contractor, including but not limited to, securing

proper access from the appropriate authority for, and providing necessary security to, each type of transaction desired.

(f) Cooperate with Customer in assigning each application involving Customer a priority for development; assign each such application a priority for development in accordance with the Portal's procedures for setting and amending the priority of all Customer applications, subject to the Agreement; and work diligently to accomplish each such application in accordance with the relative priority among all Customer applications.

(g) Lead the process of determining service applications, if any, for which a Portal fee is appropriate in order to provide resources to develop, maintain, manage, operate and expand the web Portal; conduct market research regarding current and potential for-fee Customer transactions and public record applications if deemed appropriate by the Portal and work with Customer to develop recommendations regarding services for which a fee is appropriate and the appropriate fee to charge.

(h) Lead the process of determining service applications for which no Portal fee is appropriate in order to expand the amount and kind of free information available through the web Portal as Portal resources permit; conduct market research regarding current and potential non-fee Customer transactions and public record applications if deemed appropriate by the Portal and work with Customer to develop recommendations regarding services of benefit to individuals or businesses that may be offered free of charge.

9. Responsibilities of Customer: [Depending on the services/products/deliverables to be provided, you will need to adjust these (add to or take away from) responsibilities shown below on a case by case basis.] Customer shall have the following responsibilities:

(a) Oversee the timely and effective performance of this SOW from the perspective of the Customer, and assist Contractor in resolving constructively any problems thereunder and any new issues that arise in connection therewith.

(b) Where applicable, and as may be set forth in the mutually agreed upon project plan, the Customer authorizes Contractor to access data records maintained by the Customer solely in accordance with this SOW for the services provided hereunder. Access by Contractor will be on an as needed basis for the purpose of providing access, facilitating transactions or offering other services to Users or Monthly Account Holders of the Portal as permitted by the Customer, the Agreement, and State law.

(c) Implement reasonable system and data security procedures to prevent unauthorized access and disclosure of data records. Such reasonable procedures may include user authentication policies, firewalls, and encryption of data records during transmission and storage.

(d) Provide reasonable levels of support to any Customer located or controlled central data or computer department or service, and to any division(s), in placing online with the Portal, the applications or services as mutually agreed between the Customer and Contractor with due regard to the workload and priorities of Contractor and the Customer, and with due regard to the desires and needs of Users and Monthly Account Holders of the Portal.

(e) Review and approve all screen display designs and applications prior to implementation by Contractor and prior to availability to Users and Monthly Account Holders. The Customer

agrees to perform the review in a timely manner, in accordance with the Agreement, and to promptly offer feedback, if necessary, to Contractor.

(f) Direct any applicable data or computer department or service under Customer control or where Customer has data hosted, to perform as follows:

- i. When requested, help Contractor personnel in interpreting Customer data formats and provide a point of contact for such interpretation; provide advice on display screen designs when consulted; and cooperate with Contractor in placing onto the Portal, the Customer's applications or services as mutually agreed between the Customer and Contractor, with due regard to the workload and priorities of Contractor and the Customer, and with due regard to the desires and needs of Users, and Monthly Account Holders of the Portal. The Customer may also volunteer such assistance to Contractor at the Customer's initiative.
- ii. Provide computer access to Customer applications or services as permitted by the Customer by an acceptable method, such as electronic transmission, disk, email, or other acceptable means for the purpose of access via the Portal.
- iii. Provide reasonable response time for online electronic inquiry within the limitations of the Customer's resources. It is understood that the statewide area network and state mainframe are not under the control of the Customer.
- iv. Provide reasonable levels of problem determination support to help isolate problems when requested, and if the problem resides on the Customer's end of the system, provide reasonable fixes or repairs consistent with the Customer's operational priorities. Contractor will make all reasonable efforts to determine the source of the problem before contacting the Customer.
- v. Have final control and responsibility for security authorization (in cooperation with any Customer division(s) as directed by the Customer) in granting Contractor host access to its data. The Portal Users and Monthly Account Holders will not directly access the Customer's computer system.

(g) Direct the Customer's division(s), if any, to perform as follows:

- i. When requested, help Contractor personnel, and Portal Users and Monthly Account Holders in interpreting the Customer's data records by answering questions related to laws, rules, regulations, policies and procedures administered by the Customer and provide a point of contact within the Customer for such interpretation.
- ii. Provide Contractor with advice on display screen designs when consulted and cooperate with Contractor in placing the Customer's applications or services onto the Portal as permitted by the Customer. The Customer may also volunteer such assistance to Contractor at the Customer's initiative.

iii. Assist Contractor in determining the information necessary within Customer's special expertise, to comply with state law, rules and regulations pertaining to the recovery of costs for providing access to the Customer's applications or services, conducting transactions and obtaining related services, as necessary.

iv. Cooperate with Contractor in the establishment of a reasonable fee for any access, transaction or other service for which a fee is appropriate.

v. Cooperate with Contractor in recommending the establishment of additional fee or free services available through the Portal that are of benefit to State residents and businesses, from Customer.

vi. Provide for payment, if applicable, in accordance with the terms of the Agreement and this SOW.

10. Customer Services or Support (Personnel Requirements): [Describe in sufficient detail any portions of the project that are to be performed by Customer or provided by Customer to Contractor. In addition, describe any support functions that are to be performed by Customer (e.g., DBA support)]

11. Facilities and Equipment (Business Requirements): [Describe any facilities, equipment, tools, supplies, telephone lines and service, internet service, office support and other sorts of equipment, facilities, or related items other than as provided in the Agreement to be provided by Customer.]

12. Environments: [Specify any development, testing, implementation or other environments to be provided by Customer].

13. Additional Requirements: [Insert and describe assumptions regarding the status or condition of any necessary items (i.e. if the work to be done assumes or requires that there exist a unique transaction ID number for each transaction).]

14. Project Change Control Process: The parties agree that any changes in the scope of this SOW will be processed as specified in Article 38 of the Agreement.

The parties understand and agree that the success of this project is not only contingent on the resources provided by Contractor, but also the resources provided by Customer. The milestone dates for each work stream included in this SOW are dependent on receiving input from Customer and Contractor resources in a timely manner. If these dates are missed by either Contractor or Customer for reasons other than Force Majeure Events, the parties will work together to adjust the project schedule and payment schedules accordingly.

15. Disputes: Any conflict between the parties shall be addressed utilizing the procedure specified in Article 22 of the Agreement.

16. Termination: Notwithstanding any other provision of this SOW to the contrary, this SOW may be terminated as follows: (a) upon the mutual, written agreement of the parties; (b) If either party fails to comply with the terms of this SOW, the non-defaulting party may terminate the SOW upon the giving of thirty (30) business days written notice unless the breach is cured within said thirty (30) business day period, or within such other period as may be agreed upon by the parties; (c) Customer may terminate the SOW without the assessment of any penalties upon thirty (30) business days written notice to Contractor if Contractor becomes the subject of bankruptcy, reorganization, liquidation or receivership proceedings, whether voluntary or involuntary, (d) Customer may terminate the SOW without the assessment of any penalties pursuant to Article 10 of the Agreement in the event funds are insufficient for the project; (e) after consultation with Customer, ITS and, if applicable, DFA, Contractor may, upon the giving of thirty (30) business days written notice terminate a particular service application if there is insufficient interest in such application demonstrated by the Users of Monthly Account Holders; or (f) Contractor may, following the giving of thirty (30) business days written notice and opportunity to cure, terminate this SOW or a particular service if the Customer fails to maintain the applications with updated information available to the Portal in accordance with the schedule agreed upon by Contractor and the Customer and such failure to maintain was due to reasons other than Force Majeure Events.

17. Collections: With respect to Subscription Services, Contractor shall be responsible to use it reasonable efforts for the collection of payments in accordance with the terms of the Agreement or this SOW.

18. Liability for Content: Contractor is not responsible for the content of any information provided to them for purposes of fulfilling the obligations of this SOW, or for the transmission, accessing or reception of the information by third parties. The Customer acknowledges that Contractor exercises no control, censorship, or direction over the links the Customer may request to other non-Portal sites that may be made available on the Portal. Further, the Customer acknowledges that Contractor exercises no control, censorship, or direction over the content of the Customer's public records or text furnished by the Customer to the Portal.

19. Suspension or Termination of Access: It is understood and agreed that the Customer or Contractor, at Customer's direction, shall have the right to suspend or terminate any User's or Monthly Account Holder's access to Customer's records at any time, for any period and without prior notice, if the Customer or Contractor learns that unauthorized access to the Customer's records or to any information derived therefrom has occurred or may occur or if the Customer obtains knowledge that any Users or Monthly Account Holders are unlawfully using, selling or releasing the Customer's records or creating an unauthorized database from the Customer's records, without Customer permission. The User or Monthly Account Holder at issue will not be permitted any future access to Customer records, unless otherwise directed by Customer.

20. Complete Agreement: This SOW and the Agreement, to the extent applicable, along with the associated mutually agreed upon project plan, if any, constitute the complete understanding of the parties with respect to the obligations herein. No amendment, waiver or alteration of this SOW will be effective unless signed by an authorized officer of each of the parties to this SOW.

21. Other Provisions: [Insert any additional terms agreed to by the parties. Any term in conflict with the terms and conditions of the base Agreement must be approved by the NIC and ITS legal departments.]

For the faithful performance of the terms of this SOW, the parties hereto have caused this Agreement to be executed by their undersigned authorized representatives.

**State of Mississippi, Department of
Information Technology Services**

By: _____
Authorized Signature

Printed Name: David L. Litchliter

Title: Executive Director

Date: _____

Mississippi Interactive, LLC

By: _____
Authorized Signature

Printed Name: _____

Title: _____

Date: _____

**Mississippi Department of Finance and
Administration**

By: _____
Authorized Signature

Printed Name: Cille Litchfield

Title: Deputy Executive Director

Date: _____

[Insert Customer Agency]

By: _____
Authorized Signature

Printed Name: _____

Title: _____

Date: _____

EXHIBIT C: List of Existing Applications

Agency	Application Name	Date Deployed	Hosting
Agriculture & Commerce, Dept of	MS Market Subscription Bulletin	04/05/2010	ITS
Bd. of Architecture	License Renewal	09/27/2001	ITS
Bd. of Contractors	License Renewal	08/31/2010	ITS
Bd. of Dental Examiners	License Renewal	09/28/2006	ITS
Bd. of Funeral Service	License Renewal	06/01/2010	ITS
Bd. of Geologist	License Renewal	11/01/2010	ITS
Bd. of Massage Therapy	License Renewal	06/08/2009	ITS
Bd. of Medical Licensure	License Renewal	04/27/2004	ITS
Bd. of Nursing	License Renewal	09/23/2004	ITS
Bd. of Social Workers, Marriage / Family Therapy (SWMFT)	License Renewal	04/16/2008	ITS
Education, Dept of	Duplicate Certification Copy	8/31/2010	ITS
Employment Security, Dept of	Unemployment Taxes	04/05/2007	Agency
Health, Dept of	Clinic Payments (POS)	11/29/2006	ITS
	License Renewal	07/01/2007	ITS
Insurance, Dept of	Tobacco Company Registration	07/01/2010	Agency
Military	Fund Raising	07/27/2005	ITS
MS Development Authority	MS Market	11/17/2009	Agency
Pro. Engineers & Land Surveyors	License Renewal	10/23/2007	ITS
Public Safety, Dept of	License Renewal	01/07/2002	ITS
Secretary of State	SOSKB (UCC & Annual Reports)	09/30/2002	Agency
	Metals	08/05/2008	Vendor
	BFOCUS (UCC)	06/01/2010	Agency
	Lobbyist Registration	12/13/2010	Agency

Agency	Application Name	Date Deployed	Hosting
State Fire Academy (Generic App)	Training Class Payments	12/09/2009	ITS
Transportation, Dept of	RFP Proposals	05/10/2004	Agency
Wildlife, Fisheries & Parks, Dept of	Hunting & Fishing	01/30/2002	ITS
	Boating	01/30/2002	ITS
	Dove Permit	08/12/2008	ITS / DMZ

Existing Applications Pending Deployment

Agency	Application Name	Anticipated Deployment Date	Hosting
Agriculture & Commerce	Pesticide Registration	June 2011	ITS
Archives & History, Dept of	Subscription Service	1/4/2011	ITS
Banking and Consumer Finance	Consumer Loan Renewal	February 2011	ITS
Banking and Consumer Finance	Banking Assessments	February 2011	ITS
Pharmacy Board	License Renewal	1/21/2011	Agency
Real Estate Commission	Real Estate License Renewal	March 2011	ITS
Real Estate Commission	Home Inspector License Renewal	March 2011	ITS
Real Estate Commission	Appraisal License Renewal	March 2011	ITS
Supreme Court	PAMEC	1/4/2011	ITS

EXHIBIT D
FLOW OF FUNDS DIAGRAM

MS Proposed Flow of Funds

